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PERSONNEL PRACTICES OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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PERSONNEL PRACTICES OF OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

THURSDAY, MAY 9, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The subcommittee met, pursuant to call, at 2:10 p.m., in room 311, Cannon House Office Building, Hon. Gerry Sikorski (chairman of the subcommittee) presiding.

Mr. SIKORSKI. The subcommittee will come to order.

This is a hearing of the Subcommittee on Investigations of the Post Office and Civil Service Committee of the U.S. House of Representatives. The subcommittee is responsible for "investigation, review and study on a continuing basis of the application, administration, and execution of those laws or parts of laws the subject matter of which is within the jurisdiction of the committee."

Included within this jurisdiction are the laws and regulations which govern the discharge or discipline of Federal employees for improper conduct, 5 USC section 7513, the removal or downgrading for unacceptable performance, 5 USC section 4303, the Ethics in Government Act and its implementing regulations, 5 USC appendix, and the prohibited personnel practices under 5 USC section 2302.

Recently allegations have been voiced which call into question whether the management of the Occupational Safety and Health Administration has been complying with those and other civil service laws, regulations, and protections. New reports over the last few weeks of a managers' meeting in mid-April held at a resort in Williamsburg, VA, indicated that a Department of Labor Deputy Assistant Secretary of OSHA, James Meadows, stated that the policy of the agency was to—and I quote—"kick ass and take names"—end of quote—in order to rid the agency of problem employees or troublemakers. The phrase—and I quote—"kick ass and take names"—end of quote—was the theme of part of the 3-day conference with OSHA officials posting the initials KATN in the meeting room.

A memorandum written by a manager who attended the meeting stated that Mr. Meadows further said that, if the regulations protecting Federal employees were a hindrance, they should "go ahead and terminate them, and let them hire an attorney and spend the next 3 years trying to get their jobs back." It was, in the words of the memo, "scary."

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Additionally, there have been reports to this subcommittee of employees who were fired, involuntarily transferred, demoted, or subjected to other forms of harassment because their views did not coincide with those of the top managers. That is, because they take seriously the charge given to OSHA by this Nation's Government and people to protect the health and safety of the American workforce. One employee my staff spoke with had allegedly been RIF'd into a job he was not qualified for after he had pressed for stronger OSHA enforcement, then was subjected to a performance-based action because he was not qualified for the job. He summed up the catch-22 situation he had been put in by saying that "they had to come across the street to mug me."

These reports raise serious questions about whether the top management of the Occupational Safety and Health Administration, which is charged with protecting the health and safety of 75 million American working men and women in 4.5 million workplaces, is intimidating and harassing its own employees.

I am concerned by what appears from the news reports to be an almost McCarthy-like crusade for political conformity within OSHA, and I am bothered by the allegations of encouragement to violate and actual violation of Federal civil service laws. These allegations raise questions which must be answered. I hope that this hearing this afternoon will do that.

Does the gentleman from Missouri wish to make an opening statement?

Mr. TAYLOR. Mr. Chairman, I don't have an opening statement. I am anxious to hear the testimony here today, because I really knew nothing about this situation until today, therefore, I am glad to be here.

I would request, Mr. Chairman, that, if possible, we have an overnight turnaround on the transcript of this hearing. It is my understanding that the witnesses from OSHA have requested permission to record today's hearings for their records, and it wasn't allowed. So, I would do that and try to provide them with a transcript of this hearing as soon as possible.

Mr. SIKORSKI. I think that the gentleman's suggestion is in order. We will try to accommodate.

Our first three witnesses on the first panel are Robert A. Roland, Assistant Secretary of Labor for Health; James R. Meadows, Deputy Assistant Secretary; and Leonard Vance, Director of Health Standards at OSHA.

Gentlemen, you were sent in the request letters copies of the rules of the committee. Before you on the table are available the rules of the House and the committee. If they are not, they should be provided at this point.

Do any of you wish counsel?

Mr. ROWLAND. We have counsel here. I don't think I need counsel. Mr. Vance has counsel.

Mr. SIKORSKI. Mr. Vance, do you have counsel?

Mr. VANCE. Yes, I have counsel.

Mr. SIKORSKI. Would the individual state your name for the record?

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Mr. WHITE. Just to clarify, Mr. Chairman, my name is Frank White. I am with the Office of the Solicitor in the Department of Labor. I am representing the Department in that capacity.

Mr. SIKORSKI. So, none of you request personal counsel, is that correct?

Mr. WHITE. I am not Mr. Vance's personal counsel.

Mr. SIKORSKI. Do any of you request personal counsel?

Mr. ROWLAND. No.

Mr. VANCE. No.

Mr. MEADOWS. No.

Mr. SIKORSKI. Thank you.

Do any of you have any objections to being sworn in?

Mr. ROWLAND. No objection.

Mr. SIKORSKI. If not, stand and raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROWLAND. I do.

Mr. VANCE. I do.

Mr. MEADOWS. I do.

Mr. SIKORSKI. Thank you, gentlemen.

Mr. Rowland, I first want to thank all three of you for appearing today. You were notified just a week ago and requested to attend. We appreciate your willingness to be here with us, as well as your submission of your written testimony a couple of days ago.

Mr. Rowland, I will recognize you. All of your written statement will be put in the record as submitted. If you wish to summarize it or to read it in full, you may do so at this point.

Mr. ROWLAND. I would like to read it, Mr. Chairman.

Mr. SIKORSKI. Thank you, Mr. Rowland.

STATEMENT OF ROBERT A. ROWLAND, ASSISTANT SECRETARY OF LABOR FOR HEALTH, ACCOMPANIED BY JAMES R. MEADOWS, DEPUTY ASSISTANT SECRETARY, AND LEONARD VANCE, DIRECTOR OF HEALTH STANDARDS

Mr. ROWLAND. Mr. Chairman and members of the subcommittee, I have been asked to appear before this subcommittee to discuss the personnel practices of the Occupational Safety and Health Administration, [OSHA]. I can assure you that in the 9 months in which I have held this office, OSHA has done its utmost to adhere scrupulously to the law and to all personnel regulations prescribed by the U.S. Office of Personnel Management and the Department of Labor.

There are some 2,300 employees at OSHA, the overwhelming majority of whom do a fine job. About 1,800 of these employees are in the field, carrying out the agency's mission to improve safety and health conditions in the Nation's workplaces. The remainder are here in the national office, dedicated to the same goal.

My policy as head of this agency has been to encourage diligence and to reward excellence. In the 9 months since I have been in this office, we have given bonuses for outstanding performance to 4 of the 18 agency managers who are members of the senior executive service. None of our senior executives has received less than a fully satisfactory performance rating. Bonuses of approximately $253,000

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have just recently been approved—virtually the maximum amount permitted by the law—for 182 of OSHA's merit pay managers, out of a total of 361 such managers, who have done an excellent job for the agency over the past year. In addition, in the past 9 months 153 quality step increases have been awarded totalling $98,000 to employees whose performance deserved special commendation.

In recognition of specific and significant contributions made to the agency, cash awards have been issued totalling $86,000 to another 125 employees. In addition, 9 awards involving 44 employees have been made under the Department of Labor's Honor Awards Program. These awards include recognition of individual and team achievements such as region VII's fatality information dissemination project, a team effort which resulted in issuance of graphic summaries of OSHA's fatality investigations for distribution and use in preventing the recurrence of similar accidents.

Another team effort that was recognized last year by the Secretary's Honor Awards Program was a program developed in region IV to train employers and employees in the region in the safe use of crane-suspended personnel carriers.

Thus a significant number of employees who have demonstrated dedication and excellent performance have received the special recognition they merit. The overwhelming majority of the agency's other employees have done a fully satisfactory job or better.

While standards of excellence and suitable recognition for good performance are perhaps the most important elements in the successful operation of any organization, the responsibility of managers extends also to the less palatable, but essential tasks of (*a*) noting unacceptable performance or conduct when it occurs, and (*b*) making a concerted effort to help employees overcome any apparent deficiencies. It is inevitable in any organization, whether in the Federal sector or the private, that from time to time instances will occur in which an employee's performance or conduct fails to meet minimum acceptable standards.

All important is the need for managers, first, to provide reasonable work assignments commensurate with grade levels and, second, to ensure that employees are aware of both what constitutes acceptable standards of performance, and ethical conduct. Just as important is the need for managers to provide guidance when performance falls below par or when the first evidence of misconduct appears. Our goal, in personnel management, as in OSHA's statutory mission, is to correct deficiencies, not to punish.

Unfortunately, efforts to assist employees in correcting deficiencies do not always succeed, and adverse or disciplinary action must sometimes be taken by OSHA managers, but only as a last resort after all other remedies have been exhausted and only in accordance with the Civil Service Reform Act and the prescribed regulations and procedures of the U.S. Office of Personnel Management and the Department of Labor.

It was in the context of this concern for supervision that remarks were made at the agency's recent annual planning conference which have since led to an apparent misapprehension that OSHA's personnel policies and practices are not in accordance with the law. The OSHA Planning Conference, which was held in Williamsburg, VA, from April 16 to 18, consisted of numerous plenary sessions

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and workshop sessions spread over 2½ days. Some of those sessions were devoted to the concept of team excellence, and participants were encouraged to divulge what they needed most from the other participants in order to do the best possible job. This exercise was part of a management-training device which has been used by many organizations, public and private. It was in this setting, designed to encourage informal and frank exchanges of individual views, that remarks were made which were taken out of context and thus created a false statement.

Mr. Chairman, I would like to submit for the record a copy of a reminder I have given my managers concerning OSHA's personnel policies and practices. I sent this reminder to dispel any misunderstanding that may have arisen following our annual planning conference 3 weeks ago. In this memorandum to OSHA's national office executive staff and Regional Administrators, most of whom attended the planning conference, I have noted that part of their responsibility as managers is to ensure that ethical standards of conduct are maintained and that, when necessary, they must identify reasons for any deficiencies in performance that may exist and must work to correct such deficiencies. I remind them that if such efforts fail, the situation must be dealt with in accordance with established regulations and procedures. The memorandum also reinforces the agency's previously established policy that there must be no strictures by OSHA managers on any expression of views by employees as private individuals and that they must be free to act within the law if and when they do not agree with the agency's decisions or actions.

I personally have not proposed, nor have I decided, any performance of misconduct cases since I have been at OSHA. The Office of the Assistant Secretary has not proposed any such personnel actions and has decided only one during this period. In this case, the employee was not terminated. In all instances of alleged serious misconduct, I have directed my managers to refer the matter to the inspector general of the Department of Labor, who determines whether an independent investigation is warranted. After a report has been received from the inspector general, my managers are instructed to seek administrative advice from the agency's personnel office, which, in turn, may seek counsel, independent of the agency, from the Department of Labor's Office of the Assistant Secretary for Administration and Management [OASAM], the Office of the Solicitor of Labor, or the U.S. Office of Personnel Management.

In the field, regional administrators are instructed to seek the advice of OSHA's personnel office as well as of OASAM staff in the field. My managers and I have done our utmost to follow all prescribed procedures and regulations of the U.S. Office of Personnel Management [OPM] and of the Department of Labor. Our record over the past 9 months has been compatible with my predecessors' record over the past 10 years.

The subcommittee's letter of invitation, Mr. Chairman, expresses concern that career civil service employees may be considered problem employees if they express their views about agency policies. The genesis of this concern appears to be a statement which was circulated anonymously within OSHA, but which is erroneous both in its content and its implications. I have made it clear at all times

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since I have been at OSHA that employees have the right to their own opinions on occupational safety and health issues and have the right to act as private individuals on those opinions, in accordance with the law. My recent reminder to OSHA managers repeats this reassurance of employees' absolute freedom of speech and their freedom of action as private individuals.

It is no secret that some of the Department of Labor's policies during the past 4 years have elicited public criticism from some sectors. This is to be expected when important policy changes take place. Likewise, such changes are bound to affect employees with strong personal views on their work. While we believe in the policies we have implemented at OSHA, we recognize and respect that some hold differing opinions. Where these differences are central to employees' duties and roles in the department, conflict is bound to be present to some degree.

I cannot close these remarks without emphasizing once again the fine job being done by the vast majority of OSHA employees in the national office and in the field. I would like to call the subcommittee's attention to a questionnaire which was circulated by my predecessor to establishments that had been inspected by OSHA. More than 90 percent of those who filled out the questionnaires rated OSHA's compliance officers as highly competent and professional. This is a rating of which all of us at OSHA are particularly proud.

That completes my prepared statement. I will be happy to answer any questions you may have.

But before that, Mr. Chairman, I would like to state that, listening to your statement and reading it just shortly before I got here, since it was just delivered, I want to categorically deny the allegations that are contained in it. They are just not true.

Mr. SIKORSKI. Well, let's get to those, Mr. Rowland. I want to thank you for your statement.

Mr. Meadows, we have seen newspaper stories reporting that you told OSHA managers at this resort conference down at Williamsburg to rid themselves of—quote—"troublemakers"—unquote—by—and I quote again—allegedly your words—"kick ass and take names"—end of quote.

As you can imagine, there are quite a number of questions and concerns about these kinds of remarks. But before we get to those, I would like to introduce in the record a copy of a memo written by someone who allegedly was at the seminar. Without objection, it will be entered.

[The information follows:]

At the recent OSHA managers conference in Williamsburg, James Meadows spent about 10 minutes chastising OSHA managers for not being aggressive enough in using OPM and DOL regulations to terminate problem employees.

He specifically said that OSHA needs to do more to rid itself of troublemakers, and if the regulations were a hindrance, to "go ahead and terminate them, and let them hire an attorney and spend the next three years trying to get their jobs back".

You can confirm this with any honest OSHA manager who was at the conference. Meadows went on to categorize most federal employees as lazy and along for a free ride, and it was up to the senior managers to "kick ass and take names". The senior OSHA managers quickly titled the conference the KATN conference. It was scary.

Mr. SIKORSKI. That memo corroborates statements made by other OSHA managers at the seminar. It states that you—and I quote again—"spent ten minutes chastizing OSHA managers for not

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being aggressive enough in using OPM and DOL regulations to terminate problem employees," end of quotation from that memorandum.

Mr. Meadows, do you have a copy of that memorandum?

Mr. MEADOWS. I have a copy of this one as it appears.

Mr. SIKORSKI. You reportedly went on to say that, to get rid of these "troublemakers" managers should, and I quote, "go ahead and terminate them, and let them hire an attorney and spend the next 3 years trying to get their jobs back."

The memo also alleges that you characterize most Federal employees as "lazy and along for a free ride".

Mr. Meadows, my staff spoke to a number of OSHA employees and officials who confirmed that you made the comments described in this memo. Do you deny telling OSHA managers to "kick ass and take names"?

Mr. MEADOWS. To the best of my recollection, Mr. Chairman, I did not tell the managers to "kick ass and take names".

Mr. SIKORSKI. Did you use the phrase?

Mr. MEADOWS. Did I use the phrase?

Mr. SIKORSKI. Yes.

Mr. MEADOWS. To the best of my recollection, no, I did not use the phrase.

Mr. SIKORSKI. You never used the phrase in that seminar?

Mr. MEADOWS. I am not going to say never on anything. But to the best of my recollection, I did not use that phrase.

Mr. SIKORSKI. What phrase did you use that people got the impression, including people that were there, that you did say it?

Mr. MEADOWS. Well, if you are talking about, from what this note, this unauthored and unsigned note that has been circulated around OSHA says, and if you are talking about the alleged 10 minutes in question——

Mr. SIKORSKI. I am just talking about the seminar now—and we'll get back to that.

Mr. MEADOWS. The seminar was 2½ days long.

Mr. SIKORSKI. Two and a half days long.

Mr. MEADOWS. Correct.

Mr. SIKORSKI. And there was a discussion as part of that seminar that became titled the KATN part, using the initials from the phrase "kick ass and take names".

Are you familiar with anything I have said thus far?

Mr. MEADOWS. I am familiar with the letters KATN appearing at the seminar.

Mr. SIKORSKI. What do those letters stand for? What did they stand for at the seminar?

Mr. MEADOWS. The letters stood for at the seminar "kick ass and take names".

Mr. SIKORSKI. And you never used that phrase?

Mr. MEADOWS. I did not say I never used that phrase. I said to the best of my recollection——

Mr. SIKORSKI. Well, did you use the phrase?

Mr. MEADOWS. I may have, and I may not have. To the best of my recollection, I did not use that phrase.

Mr. SIKORSKI. Where did people get the impression that you used it, then?

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Mr. MEADOWS. That's what I'd like to know, Mr. Chairman.

Mr. SIKORSKI. Well, did you lead a discussion that that phrase was raised in?

Mr. MEADOWS. No, sir.

Mr. SIKORSKI. Did you hear that phrase used?

Mr. MEADOWS. Yes, sir.

Mr. SIKORSKI. And who used it?

Mr. MEADOWS. Probably all 30 people attending the conference, at some time or another. I will tell you when I first recall the phrase being used. The first day of the conference was a Tuesday. And on Tuesday afternoon we broke off into groups after being led in the morning session by a moderator. And we were talking all morning long about leadership and the qualities of leadership and what qualities an individual has to have to demonstrate leadership or have leadership as it's perceived by most people.

The facilitator at the seminar had us break off into groups.

Mr. SIKORSKI. Who was the facilitator?

Mr. MEADOWS. I think it was a fellow by the name of Cascio.

Mr. SIKORSKI. Is he from OSHA or was he employed by OSHA?

Mr. MEADOWS. He's from our training institute in Chicago.

We broke off into three groups. We were asked to go into our groups and to talk about the word or the term leadership and what were the qualities and then report back and have each group report back.

We were also supposed to come back with a name of an individual or individuals, past or present, who in our group's opinion—the opinion was derived by a majority vote—that best demonstrated, the attributes of leadership.

Our group came back, and we talked. We talked about leadership. And we said some of the attributes that a leader has to have are: He or she has to have the ability to motivate people, they have to be decisive, they need to be able to take feedback, they need to be able to move both people and programs and have the ability to organize and get everyone going in one simple direction to accomplish a goal.

Some of the names that our group talked about were General MacArthur, President Reagan, Lee Iaccoca, General Patton, and Vince Lombardi, as people who, past or present, had exhibited these qualities and leadership.

One of the other things a leader has to do when it came to problems, was to solve the problems and get people motivated and headed in the right direction. And that included personnel problems. Our group, to the best of my recollection, came back from our meeting. And on the items where we talked about——

Mr. SIKORSKI. Wait a minute. You told me that someone in that group used the term.

Mr. MEADOWS. I didn't say that. I'm getting to where it came. We came back from the group and we had our flip charts.

Mr. SIKORSKI. Who is we?

Mr. MEADOWS. Well, it was myself and some of the RAs, some people from the national office.

Mr. SIKORSKI. When you say RAs, you mean regional administrators?

Mr. MEADOWS. Regional administrators. Excuse me.

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And some of our national directorate heads here in the Washington office.

Mr. SIKORSKI. These people that you just named, or didn't name, identified by position, were in the group that you were in. Is that correct?

Mr. MEADOWS. That's correct.

Mr. SIKORSKI. And you came back. And you had your flip charts.

Mr. MEADOWS. That is correct.

Mr. SIKORSKI. OK.

Mr. MEADOWS. And on our flip charts, somewhere on our flip chart we talked about personnel, I believe, or something like that. And on it were the letters KATN.

Mr. SIKORSKI. How did those letters get there?

Mr. MEADOWS. We were talking about what I mentioned earlier, about having to motivate people and get them all pulling in the right direction to accomplish a goal. And we were joking and laughing about the different ways that some of the names I've mentioned to you have motivated people in the past, and the people that we felt had represented leadership.

Mr. SIKORSKI. Wait a minute. Those flip charts were produced in your group?

Mr. MEADOWS. Well, every group produced flip charts.

Mr. SIKORSKI. Did you produce one or two or three flip charts?

Mr. MEADOWS. I don't know how many we produced.

Mr. SIKORSKI. And the letters KATN were put on during your group meeting?

Mr. MEADOWS. Yes, sir.

I'm getting to the point where it first appeared. To the best of my recollection, it appeared on the flip charts that came out of our group when we were talking about Vince Lombardi.

Mr. SIKORSKI. Who talked about Vince Lombardi?

Mr. MEADOWS. We all did.

Mr. SIKORSKI. You all, all of a sudden, started talking about Vince Lombardi?

Mr. MEADOWS. We took a vote on all the names I've mentioned to you.

Mr. SIKORSKI. OK, who mentioned Vince Lombardi?

Mr. MEADOWS. I don't know.

Mr. SIKORSKI. You don't remember who mentioned Vince Lombardi?

Mr. MEADOWS. There were six or seven people in our group. I don't remember the first person to mention Vince Lombardi. We went through a series of votes.

Mr. SIKORSKI. Who mentioned KATN in association with Vince Lombardi's name?

Mr. MEADOWS. I don't remember.

Mr. SIKORSKI. You don't remember that. How long ago was this seminar?

Mr. MEADOWS. April the 17, I think. What is that, 2 weeks ago, 3 weeks ago?

Mr. SIKORSKI. But you never mentioned the word—you didn't mention the phrase "kick ass and take names"?

Mr. MEADOWS. Are you asking me if I never mentioned it, Mr. Chairman?

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Mr. SIKORSKI. I am asking if you mentioned it in that session.

Mr. MEADOWS. Once it appeared on the flip chart, I probably did mention it in that session, yes.

If you're trying to ask me, am I the originator of that in that session——

Mr. SIKORSKI. I didn't ask you whether you're the originator. I asked a very direct question, and that's all I will confine my questions to if you confine your answer to that.

So, you did use that phrase in that session?

Mr. MEADOWS. I said I may have used that phrase in that session after it was mentioned.

Mr. SIKORSKI. Will the reporter read back the response given by the witness?

[Previous response of witness played aloud by the reporter.]

Mr. SIKORSKI. Is your response there an accurate reflection of your current memory?

Mr. MEADOWS. That I probably did mention it, once it was mentioned?

Mr. SIKORSKI. Right.

Mr. MEADOWS. Yes, sir, that would be accurate.

Mr. SIKORSKI. And how many times did you probably mention it?

Mr. MEADOWS. I don't know. I don't know how many times I mentioned it, but I know that when it was mentioned, there was general laughter. It wasn't mentioned in a malicious or vicious tone. It was just something that you do in an informal group. And people mentioned it, and people laughed. And it was never meant to be malicious or vicious or anything of that nature. It was just a phrase to liven up the discussion, I believe.

Mr. SIKORSKI. And this is in the context of discussing what should be done by people in leadership positions within OSHA in motivating their people. Is that correct?

Mr. MEADOWS. Not necessarily in OSHA, Mr. Congressman. We were talking about the qualities of leadership in people past and present and what those qualities were.

Mr. SIKORSKI. The context of the discussion was a group of OSHA managers and regional administrators, and national office people in management positions. And they were discussing leadership criteria. Is that correct?

Mr. MEADOWS. That is correct.

Mr. SIKORSKI. OK. Then it got transcribed onto a chart. Is that correct? Even though it was only in a jocular, humorous vein it got transferred. It was important enough to list on a chart, and to report back?

Mr. MEADOWS. It was on the chart.

Mr. SIKORSKI. Who did the chart?

Mr. MEADOWS. Let's see. I think the person we elected to take the notes was Mel Cassidy, who wrote the words on the chart.

Mr. SIKORSKI. Then you reported back to the group. Who reported back to the group?

Mr. MEADOWS. Well, unfortunately for Mr. Cassidy, he did, because he was the only one wearing a coat and tie. So, we elected him.

Mr. SIKORSKI. And he reported back to the group. Did he use the phrase then in that discussion?

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Mr. MEADOWS. He went over our flip charts. The letters KATN were up there. And someone in the audience asked him what does KATN stand for. And he told them what those letters stood for.

I am not going to say that he was the originator of those letters. He was the person reading the charts that came from our group. And those words came from our group.

Mr. SIKORSKI. At this point I think we should introduce into the record the charts that you provided.

[The information follows:]

[First Chart]

Behaviors: Decisive. Strategies. Using people (managing). Communicator. Results oriented. Ability to Motivate. Feedback. Evaluate. Action [KATN].

[Second Chart]

1. Use personnel rules and regulations more aggressively for disciplinary action [KATN].
(a) What—Better Communication.
(b) Who—RA's.
(c) When—at proposal & Decision pt.
(d) How—ADM, FO.

[Third Chart]

AIS NO. 3—KATN

What: Continue to take responsible action on perf. and disciplinary problems.
Who: Admin. programs.
When: On-going.
How: When adverse actions complete.
(Need front office support.)

Mr. SIKORSKI [pointing to the first chart]. Mr. Meadows, is this the chart from your group?

Mr. MEADOWS. I don't know. I don't think so.

Mr. SIKORSKI [pointing to the second chart]. Is this the chart from your group?

Mr. MEADOWS. I don't know.

Mr. SIKORSKI [pointing to the third chart]. Let's try this one. Is this the chart from your group?

Mr. MEADOWS. I don't think that's ours either. It might be.

Mr. SIKORSKI. So, you have three charts.

Mr. MEADOWS. Well, Mr. Congressman, one of them is from our group, I guess. I thought that we had some penciling up on the top or bottom corners of the charts indicating from which groups they came.

Mr. SIKORSKI. Number three?

Mr. MEADOWS. No, that's not—there was some—so I don't know.

Mr. SIKORSKI. We will stand in recess for the vote and be back in about 8 minutes.

[Recess.]

Mr. SIKORSKI. Let's start again.

Mr. Meadows, what do we have here now? You clearly remember that you did not originate the phrase, clearly remember that you don't remember ever using the phrase, but probably did, at least to this point in the group session after it had been raised by at least one other person.

Now, do you have something to add to that?

[Witness nods in the negative.]

Mr. SIKORSKI. You don't remember which chart is yours?

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Mr. MEADOWS. Flip through them again?

Mr. SIKORSKI. KATN, who, when, how, KATN, who, when, how. How many sessions were going on?

Mr. MEADOWS. There were three breakout groups.

Mr. SIKORSKI. Three breakout groups. And these presumably represent the charts. At least, these came from OSHA, represent the charts that came out of the breakout groups?

Mr. MEADOWS. They might represent the ones that were from the breakout groups. I don't know.

Mr. SIKORSKI. Well, Mr. Rowland, what do the charts represent? They were submitted to the committee.

Mr. ROWLAND. Mr. Chairman, I was not there the day those charts were made. But when I got there the next day, there must have been 10 or 12 charts laying around. They were all scribbled. Most of them were not as legible as those, I might add. I don't know anything about them.

They were labelled, I thought, up in the corner, as Mr. Meadows said, but I don't know.

Mr. SIKORSKI. You provided us with these charts yet don't know what they are.

Mr. ROWLAND. Those are work charts, Mr. Chairman, in a very informal session, almost a bull session. They were not documents to be recorded.

Mr. SIKORSKI. There were charts coming out of these breakout group meetings?

Mr. ROWLAND. There was scribbling like blackboard notes.

Mr. SIKORSKI. I understand that. What I am trying to do is specify how they arrived in this form.

Mr. ROWLAND. That's the way they were made up. They were on an easel and people just wrote——

Mr. SIKORSKI. Out of the breakout group?

Mr. ROWLAND. Yes.

Mr. SIKORSKI. But you don't have any recollection which chart was yours? Is that right, Mr. Meadows?

Mr. MEADOWS. No, I really can't tell you if that's the one that our group did or not, which one of those three are.

Mr. SIKORSKI. You think one of these three is your chart though?

Mr. MEADOWS. If that's the only place KATN appears on the charts that we gave you, then I would have to say that one of those three probably came from our group.

Mr. SIKORSKI. And there were four breakout groups or three breakout groups?

Mr. MEADOWS. I thought there were only three.

Mr. SIKORSKI. Three breakout groups, three breakout groups, all end up talking about Vince Lombardi, and all end up talking about KATN, even though it was raised informally without any originator that you can remember, and was put on sheets and reported back to the full seminar?

Mr. MEADOWS. Mr. Chairman, to repeat, I thought that those charts should have some little pencil marks up on the corners, up at the top or some kind of, there's 3M stickum paper that had some kind of identification to it, that might help you determine where those came from.

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Mr. SIKORSKI. Do you want to answer my question? We've got KATN, which you've testified means "kick ass and take names", what, who, when, and how, in one kind of handwriting, one kind of coloring. Another one in another handwriting comes up with KATN, what, who, when, how. And another one comes up with KATN under behavior with other words listed. These representing, apparently, the three breakout groups.

Mr. MEADOWS. There were——

Mr. SIKORSKI. Is your explanation of how this KATN came about plausible, when all three groups come up with the same wording?

Mr. MEADOWS. You're assuming that those charts came from the three groups. We were there for 2½ days and we broke into groups.

Mr. SIKORSKI. OK. You explain to me. I have asked you to. You explain to me how the three charts with these similarities came about?

Mr. MEADOWS. Do you want me to theorize or what?

Mr. SIKORSKI. No. You explain to me how they came about.

Mr. MEADOWS. I don't know how they all came about, Mr. Chairman, except——

Mr. SIKORSKI. Is it only coincidence then that who, what, when, and how under KATN appeared in these two different charts?

Mr. MEADOWS. Well, let me explain to you how who, what, when, and how came about.

Mr. SIKORSKI. No. Answer that question, because you've told me that it just came about independently, without your origination of it, in a casual, jocular conversation in one of the breakout groups. If that's the case, explain to me how it is represented on three different charts with similarities, discussion points.

Mr. MEADOWS. I will.

In the 2½ days that we were there, on the first day in the afternoon, after Mr. Cascio's moderation, we broke out into the groups. Our group came out with KATN. Now, on the second day that we were there, we had a general session again.

Mr. SIKORSKI. Were you a participant in that general discussion, that general session?

Mr. MEADOWS. I was a participant, yes, sir.

Mr. SIKORSKI. Did you use the phrase KATN or "kick ass and take names," or any abbreviation or acronym associated with it?

Mr. MEADOWS. In which general session?

Mr. SIKORSKI. In any general session.

Mr. MEADOWS. To the best of my recollection, I did not use the "kick ass and take names" in any general session.

Mr. SIKORSKI. Would you answer my question?

Did you use the acronym?

Mr. MEADOWS. Oh, excuse me. To the best of my recollection, I did not use the acronym either in a general session.

Mr. SIKORSKI. Did you use it in a group session other than the one that you stated you probably did, the first group session?

Mr. MEADOWS. I probably did, Mr. Chairman.

Mr. SIKORSKI. You probably used it in other group sessions then?

Mr. MEADOWS. I think that in the other groups that I was in that it was on, let's see, on Wednesday, we probably used it in there.

Mr. SIKORSKI. Any other time?

Mr. MEADOWS. Not that I can remember.

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Mr. SIKORSKI. Did you use an abbreviation of the term?

Mr. MEADOWS. You mean an acronym?

Mr. SIKORSKI. Well, you can shorten it.

Mr. MEADOWS. To the best of my recollection, no, sir, I didn't.

Mr. SIKORSKI. Did you ever use it in a general session?

Mr. MEADOWS. No, sir, I did not, to the best of my recollection, ever use it in a general session.

Mr. SIKORSKI. This memo that is unsigned, coming from a regional administrator, says James Meadows spent about 10 minutes chastising OSHA managers for not being aggressive enough in using OPM and DOL regulations to terminate problem employees.

Mr. MEADOWS. I don't have before me an unsigned note from a regional administrator. I don't know from what you're reading.

Mr. SIKORSKI. The memo that's been introduced—you know from what I'm reading. It's the memo that's right there in front of you.

Mr. MEADOWS. You said that's from a regional administrator. I don't know that to be the case.

Mr. SIKORSKI. Well, do you know it not to be the case?

Mr. MEADOWS. I don't know.

Mr. ROWLAND. Mr. Chairman, you have supplied me today, and also Mr. Meadows, with this anonymous note with a notation at the top which you are reading, a note passed around the Department of Labor. The first time I have ever seen this it's been added. I don't know who added it.

Mr. SIKORSKI. The copy I have does not have that.

Mr. ROWLAND. That's right. But we got those and you keep repeating that phrase. It's a totally anonymous note.

Mr. SIKORSKI. Mr. Rowland, I have a question of Mr. Meadows. My question to Mr. Meadows is, do you have any information that this isn't from a regional administrator or someone that was at the session?

Mr. MEADOWS. I have no information to that effect.

Mr. SIKORSKI. One way or another?

Mr. MEADOWS. I don't know where it's from.

Mr. SIKORSKI. OK.

You are familiar with this memorandum?

Mr. MEADOWS. Unfortunately, yes.

Mr. SIKORSKI. Today isn't the first time you've seen it?

Mr. MEADOWS. No, sir.

Mr. SIKORSKI. OK. Now, looking at that memorandum, at the first sentence, which is also the first paragraph, is that an appropriate summary of your actions, at least in part, that you spent 10 minutes chastising OSHA managers for not being aggressive enough in using OPM and DOL regulations to terminate problem employees?

Mr. MEADOWS. No, sir, it is not accurate.

Mr. SIKORSKI. Did you spend 10 minutes talking to the managers about aggressive personnel action?

Mr. MEADOWS. I don't believe that I spent 10 minutes talking about it.

Mr. SIKORSKI. Did you spend any time?

Mr. MEADOWS. Yes, sir.

Mr. SIKORSKI. And what did you say?

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Mr. MEADOWS. Well, the time that I did spend talking about that in the general session was on a Wednesday, which is—it is on a Wednesday of the conference, which was the second day of the conference. And it's the day after KATN first appeared.

Mr. SIKORSKI. And what did you say?

Mr. MEADOWS. On that second day, we broke out into, we broke out into three groups again. This time the groups were different. We broke out into groups based upon regional administrators, the national office, and the assistant secretary's office, which we went off into our three groups.

Mr. SIKORSKI. Which one were you in?

Mr. MEADOWS. I was in the assistant secretary's office group.

Mr. SIKORSKI. In that breakout——

Mr. MEADOWS. Right; our moderator had us break off into those three groups.

Mr. SIKORSKI. Who was the moderator for this group?

Mr. MEADOWS. I think the moderator Wednesday afternoon was Ron Gilbert. He is a professor of either business or management, somewhere in Florida.

Mr. SIKORSKI. Did you have a discussion, did you make a statement that dealt with OPM and DOL regulations involving OSHA employees?

Mr. MEADOWS. When, Mr. Chairman?

Mr. SIKORSKI. At that breakout session that you're now describing.

Mr. MEADOWS. Yes, sir; we all did.

Mr. SIKORSKI. OK.

This memorandum goes on to say he—meaning you, presumably, because you're the only individual that's spoken about—specifically said that OSHA needs to do more to rid itself of troublemakers, and if the regulations were a hindrance, to "go ahead and terminate them and let them hire an attorney and spend the next 3 years trying to get their jobs back."

Does that phrase or discussion or topic sound familiar?

Mr. MEADOWS. Mr. Chairman, you're talking about the second paragraph? Is that correct?

Mr. SIKORSKI. Yes.

Mr. MEADOWS. Mr. Chairman, to the best of my recollection, I did not tell anyone to violate the regulations if they were a hindrance and to do what this paragraph says.

Mr. SIKORSKI. Did you use——

Mr. MEADOWS. To the best of my recollection, I never used the word troublemaker. To the best of my recollection, I never used the word problem employee.

Mr. SIKORSKI. Did you encourage anyone the Assistant Secretary's office to take strong or aggressive action?

Mr. MEADOWS. No, let me——

Mr. SIKORSKI. Did you ever have a discussion about hiring an attorney or spending the next 3 years? Did you use the phrase 3 years?

Mr. MEADOWS. I may have.

Let me explain to you, you're asking about the group, Mr. Chairman.

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Mr. SIKORSKI. No, let me ask about the phrase, and then you can go put it in the context you want to.

Did you use the term hire an attorney?

Mr. MEADOWS. I probably did.

Mr. SIKORSKI. And something about getting their jobs back?

Mr. MEADOWS. I may have said that.

Mr. SIKORSKI. OK. Now you put it in the context that you recall.

Mr. MEADOWS. OK, very good. Now, as we mentioned, on the second day of the conference, we had another moderator, Mr. Gilbert. Mr. Gilbert instructed us, after his lecture, to break off into three groups. The three groups were those of the Regional Administrators, the national office managers or directorate heads, and the assistant Secretary's office. We were instructed by the moderator that in our groups we were to go back to our group and talk about needs and matters, things that we needed from the other two groups to make, to improve the efficiency of the agency and to get us all going in the same direction.

We then, after, I think it was 1 hour in the groups or something like that, we came back and presented the needs to each group. And then the groups, part of the rest of that day, on Wednesday—and I think we may have finished it up on Wednesday—we broke back out into our groups to answer, to write on the flip charts our answers to the other two groups and what they needed from us or we needed from them in the organization.

Now, in our group, in the Assistant Secretary's group, we brought up the matter of—I think we brought up three or four things. We reported back. When we reported back what we had written on the chart, we did bring up the matter of misconduct or discipline problems or something like that in the agency. And we encouraged the managers to be, I think the word we used on the charts was aggressive, or more aggressive, in using the OPM rules and regulations to handle any kind of disciplinary or misconduct situation.

Now, when we mentioned that to our senior career people, what brought us the point of an attorney is that our senior career people who have been in OSHA for some time and with the Government for some time, said that they felt like they were using the rules. And they felt like what the problem might be is that maybe the front office just didn't know what they were doing. They also went on to say that this is a complaint that they have heard from every administration, Republican and Democrat, and that, if anything, they mentioned to us that we, the political people, were the ones who tend to slack off and not support the senior career people when they recommend some kind of action against an employee for misconduct, and that they asked us, in the Assistant Secretary's office, for more support.

We told them that that support would be there. That was their job: To be a manager of people.

Mr. SIKORSKI. By we, you mean you?

Mr. MEADOWS. No, I said we.

Mr. SIKORSKI. But did you tell them?

Mr. MEADOWS. Yes, sir.

Mr. SIKORSKI. This memo goes on to say you characterize most Federal employees as "lazy and along for a free ride" and it was up

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to senior managers to "kick ass and take names." "The senior OSHA managers quickly titled the conference the 'kick ass and take names' conference. It was scary."

Have you heard that conference referred to as the KATN conference?

Mr. MEADOWS. Only in this note.

Mr. SIKORSKI. And do you believe OSHA or the Federal Government or any Federal agency is full of lazy, unproductive employees who are along for a free ride?

Mr. MEADOWS. Mr. Chairman, this is the most despicable part of the note. And this note and that phrase right there is no good for OSHA. It's no good for the Government. And it's the furthest thing from my mind.

Mr. SIKORSKI. You've never used that?

Mr. MEADOWS. I have never used that.

Mr. SIKORSKI. You never used the word lazy in that discussion down there?

Mr. MEADOWS. No, sir. I did not use it then. I have never used it when referring to career civil servants. If they weren't around, my job would be impossible. They are what make it click. They help the political appointees through. They sit us down when we come in and explain what we can do and what we can't do. We rely on them every day to make the organization function.

I think it would be rather ludicrous for someone who has to work with those people to sit there and say that they are lazy and along for a free ride, and expect to have some kind of cooperation from them.

Mr. SIKORSKI. So, you are aware that there are specific Federal civil service laws and regulations as well as what you've said, good management judgment, that protect employees from the kinds of actions that have been typified in this KATN or "kick ass and take names" approach?

Mr. MEADOWS. Yes, sir.

Mr. SIKORSKI. They require that employees be protected, "against arbitrary action, personal favoritism, or coercion for partisan political purposes." They further prohibit reprisals against employees who disclose information that relates to "substantial and specific danger to public health or safety." They also require that employees be given the opportunity to respond to charges relating to quality of their work or any alleged misconduct, be given the right to an attorney and the right to appeal any decision on their employment.

It seems to me that this kind of KATN, or in the words "kick ass and take names," and the kind of terminate without procedures policy violates the law. Isn't that correct?

Mr. MEADOWS. Yes, sir, it would violate the law.

I would like to finish my answer to a question you had earlier.

Mr. SIKORSKI. I want to finish up my questions so I can get to the gentlemen from Missouri and from New York. And that's why I may have rushed you. Go ahead and finish.

Mr. MEADOWS. You asked how the word or phrase "hire an attorney" came about.

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Mr. SIKORSKI. Well, it was more than hire an attorney. It was those other things that you admitted you used. You talked about hire an attorney, and the next 3 years, and get their jobs back.

Mr. MEADOWS. I am going to explain that.

Mr. SIKORSKI. OK. But you're going to have to move along.

Mr. MEADOWS. Yes, sir.

As I said, when we reported back to our senior career people, some of them mentioned the fact that, well, in a lot of cases people hire an attorney, and there is litigation when we try to do this or take any kind of action. And we mentioned to them that that is their right, but by the same token, you're a manager and you have to do what's right for the agency. And if they want to hire an attorney, if an employee wants to hire an attorney and take the legal proceedings that are there for them and their protection, then that's their prerogative. But that should not stop you, as a senior manager in the Government, from doing what's right or what you perceive to be right. And you should proceed with it and then let the courts decide.

That's how "hire an attorney" came about. How it got twisted around to that, I don't know.

Mr. SIKORSKI. The gentleman from Missouri.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Rowland, has there been any significant increase in adverse personnel actions taken during the 9 months you have served as Assistant Secretary for Health, over that which might have occurred under your predecessors?

Mr. ROWLAND. I don't believe there have, sir. I don't have personal knowledge. My managers have, in fact, one of my managers researched this. He came up with the fact that the record of disciplinary actions is consistent from the time OSHA was formed right through today. It stayed fairly steady. All my predecessors have very similar records. If anything, some of them have had more discipline actions and more conduct actions.

Mr. TAYLOR. It is my understanding that during the period when the alleged statements and discussions over the "KATN" conference took place in Williamsburg, you were not present. Is that true?

Mr. ROWLAND. That is correct. I did arrive the last session, the last afternoon. And the word was on one of the charts. I asked what it meant. The explanation given to me, which was not by Mr. Meadows, and I don't recall who it was, was consistent exactly with what he has testified. It was not in a derogatory fashion.

Let me add this. KATN is a fairly—or very similar terms—is a very common term in many management books. I am not saying it's a great choice of English. In fact, I heard a speech just this last fall by one of your former colleagues who is now mayor of a major city in the United States, and he described the way he managed his employees in that city in this fashion. So, it's not an uncommon term. It is not meant as an illegal or derogatory term.

Mr. TAYLOR. Well, as a fan of Vince Lombardi, I am familiar with the term because I know he used it quite frequently. However, dealing with the Green Bay Packers and dealings with Federal employees is a little bit different. They get paid a little more to take that than Federal employees do.

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Mr. ROWLAND. Well, this was sort of a bull session atmosphere.

Mr. TAYLOR. I understand.

Well, if all of these allegations that were made—some of which, of course, have been denied, and I have no reason to believe anything but the truth has been told here—but, if they were true, would they have reflected your views, when they were talking about lazy and slothful employees, and so forth and so on?

Mr. ROWLAND. Absolutely not. And I think my record has demonstrated that.

Mr. TAYLOR. In your statement, Mr. Rowland, you allude to certain deficiencies in OSHA employees. What are some of the common deficiencies that are noted, although you point out that you think most of the OSHA employees are good, as evidenced by the number of merit pay awards that you have made. However, you do say that there are some deficiensies and I would like you to tell this subcommittee, if you would, what you consider some of these deficiencies are within OSHA.

Mr. ROWLAND. Well, again on personal knowledge, I will have to say I don't have any. I get reports, and I hear statements by my managers. They do have their problems in training employees. There are some bad conduct charges. We have had some people that have stolen, things like that. These are rare cases, very rare. But we do have more common problems, just as any organization. When you have 2,300 people, you have some people who just do not perform. We have some people who are inspectors who don't do an adequate job. We don't fire them. We try to train them.

So, we have ordinary employee problems of any organization of people that just do not perform something.

Mr. TAYLOR. I think we all recognize that this agency has a controversial and a stormy past and it is not the most popular agency throughout the business community in America. However, I believe that it is better than it used to be. I think that most businesses accept OSHA more than they did.

Now, I was a businessman before I came to Congress. I built a new building. I had an engineer who told me that he was designing the building to meet all OSHA standards. Then lo and behold, I was open 6 months, and the friendly OSHA inspector came around. He found seven violations in my building and without attempting to help me, he gave me a pink slip saying I owed him $197. I felt like he'd taken names and kicked ass, when he left there.

Now I would like to ask, do you perceive OSHA to be an agency that should go around and be judge, jury, and executioner and punish people for violations that they didn't know existed? Or should they be an agency that goes in and says, hey, you've got some problems here; let us help you with them and get them straightened out, maybe give them a citation, and help them correct the deficiencies that they have, to meet the mission of what OSHA was started for, to help assist in occupational safety and health of the workplaces of America? Is that your view? Or is it the view that we should come in with the Gestapo tactics that I alluded to? And I was a personal victim of that, and I know a lot of people have been. Is it your view that they should be helpful in the workplace rather than being there to punish people because of violations that they didn't know existed?

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Mr. ROWLAND. I think OSHA conforms to your view of what it should be. And I might add this has been the policy thrust of the Reagan administration before I got to OSHA. I think it has been very successful.

I am constantly reading about OSHA not doing its job, not enforcing the law anymore. You will probably hear witnesses say that this afternoon.

I have stated the record of the last 9 months. I have worked with these people. The current policies in OSHA are primarily the policies of career staff. Mr. Auchter, my predecessor, didn't walk in and suddenly have all these ideas in his head and say, here's how to manage OSHA. He worked with his career people. Just as Mr. Meadows said, we rely on them. The policies at OSHA are formed by the career people. The management at the top just manages these ideas. But the enforcement methods at OSHA were devised by the career people. I think they approve of what they are doing.

I think OSHA is doing what you said. And I might add that I think that we are doing more inspections—I know we are—than the previous administration. We are doing them better. And the work injury rates are going down every year during this administration. The fatality rate went down last year—25 percent in 1 year. So, we are conducting OSHA in a cooperative spirit. We call our offices full-service offices now. And that is so that we can advise people, help people, and not just prosecute people.

Mr. TAYLOR. I would just like to say, Mr. Rowland, that I would hope that OSHA would view itself as a service office to certainly help the people who are working in places and being subjected to unusual and undue hazards, to be helpful to the employees who are providing assistance and helping them make those corrections, and not there to punish them for something they didn't know was wrong.

I will say this, I think this thing turned around before this administration. I could see some improvement in OSHA during the Carter administration. I think we had some people down there that recognized the problems that were out there, and I think they did do something about it, I believe this was a loose cannon on a deck a few years ago. I know when I first came to Congress, my mail was replete with criticisms that I was receiving from constituents who were being harassed and not given an opportunity to make the corrections that probably should have been made.

I think that, on the other hand, there could be deficiencies from those within OSHA who are lax and don't do the job. However, I think somewhere in between the two extremes, this agency, if it is going to have the cooperation in the long term, of the business and labor community, has to be reasonable, even-handed, helpful, and service oriented.

Mr. ROWLAND. I think we have reached that balance. We are certainly working for it.

Let me add, when I say that, we are not hesitating to file citations. In fact, the instructions to our people are when they find a violation, file a citation. And they do. And they know they are supposed to file citations. We are not instructing them not to enforce the law. They are enforcing it. But it is the manner in which they are enforcing it which has changed.

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Mr. TAYLOR. Thank you.

Mr. SIKORSKI. I thank the gentleman.

Mr. Rowland and Mr. Meadows, we are talking about civil service laws, ethics laws. We don't have jurisdiction over OSHA. We have jurisdiction over those issues affecting both employees and appointees. We have been told by numerous employees and appointees within OSHA that—and we will hear testimony later today—that suggests there is a perception of fear, that employees who dare to challenge a policy that says don't do anything, when they believe the health and safety of 70 million Americans working in 4.5 million workplaces is being jeopardized, that they will be termed troublemakers, that they will be termed problem employees, and the kind of terminology that was tossed about, the "kick ass and take names," feeds into that fear.

If you want to respond to that, we are going to then go to a vote and to an even more interesting discussion than this.

Mr. ROWLAND. Let me respond to that.

Not this one that has a label on it, this anonymous note is not accurate, as has been testified to. It has caused a great deal of damage and some of the fear you're talking about. This conference was a very constructive conference.

Mr. SIKORSKI. Mr. Rowland, you are familiar with regional administrators James Lake of Seattle and Donald MacKenzie of Boston, aren't you?

Mr ROWLAND. That's correct.

Mr. SIKORSKI. And they stated to a reporter that Meadows and several other officials urged them to use the "kick ass" approach in running the agency. We have confirmed that with other people who were at that conference as well.

Mr. ROWLAND. Mr. Lake is here, by the way, I believe, and maybe Mr. MacKenzie, if you want to talk to them. But the "kick ass" was used as explained, just as it is used in many management textbooks, as I said. It is not meant as a break-the-law or repressive term. It is not a very good choice of language. I wasn't brought up to talk that way, I might add, although it's pretty common in this town. It is not a good term, but it is a common term. And it's a locker room term, and that's the way it was used.

It never would have come out to the employees of OSHA except for this, I might add.

Mr. SIKORSKI. The problem is, it feeds into the fear that has been expressed in this article and in conversations we have had, as do other conversations. We will get to those next.

Mr. ROWLAND. Well, I was trying to respond to that, because this statement circulated around OSHA did a lot of damage. It did damage because it didn't just say "KATN"; it says a lot of derogatory things in here that did worry people.

Mr. SIKORSKI. Thank you.

We will recess for about 8 or 10 minutes.

[Recess.]

Mr. SIKORSKI. Dr. Vance, you are the Health Standards Director at OSHA, isn't that correct?

Mr. VANCE. Yes, sir.

Mr. SIKORSKI. That means you have overall responsibility for the health standards that are promulgated by OSHA. Is that correct?

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Mr. VANCE. Yes, sir.

Mr. SIKORSKI. Now, the usual procedure, as I understand it, for developing these health standards is the creation of teams of people, scientists, industrial hygienists, lawyers, economists, so that the full range of issues can be discussed. Is that a good beginning point?

Mr. VANCE. Yes, sir.

Mr. SIKORSKI. And then the standard team comes to a consensus and makes its recommendation to you based on the record of information the team has developed. Is that a good analysis?

Mr. VANCE. Not exactly.

Mr. SIKORSKI. Why don't you tell me how it works.

Mr. VANCE. Whenever there are differences of opinion among members of a standard team, the way that that works is that the two members of the standard team take their difference of opinion to the respective directorate heads to whom they report. Those directorate heads talk amongst themselves. If they are not able to arrive at a consensus, then the issue is referred to the Deputy Assistant Secretary who handles standards.

The standard teams don't, in fact, report to me, in a sense, although I am the person who has overall managerial responsibility for ensuring that the work gets done in a timely fashion and providing whatever support the standard team would need.

Mr. SIKORSKI. Have you ever accused an employee of using language in a proposed standard that sounded as if she had been "trained in Moscow?"

Mr. VANCE. The Washington Post reported that I had said that. I don't recall saying that, but it certainly has been documented in the papers that I've said that.

Mr. SIKORSKI. Did you ever accuse an employee of writing in a "communistic" preamble to a draft standard?

Mr. VANCE. I don't recall saying anything like that. But I do recall the reports, and I recall extensive discussions with the team that was concerned that that might have occurred. I engaged in a very extensive discussion with the team that was concerned about that, to try to get the work done from that team back on a good track and get a product out.

Mr. SIKORSKI. Well, the lead team wrote you a memorandum, to R. Leonard Vance, Director of Office of Health Standards, dated August 12, 1982. I have a copy here and I will give you a copy. It says.

As members of the lead team who have worked very closely with (blank) over the past 18 months

the copy we have has a name or names omitted.

and have carefully reviewed and approved every document transmitted to supervisors, we wish to advise you that we take very seriously your characterization of the lead team's draft proposal. We refer to your notification to (blank) supervisor in late July 1982 that you considered the boilerplate language she had inserted in the preamble to the draft proposal to be "communistic" and your reiteration of these criticisms to (blank) on August 5, adding that what she had written sounded as if she had been "trained in Moscow."

Does that refresh your recollection?

Mr. VANCE. I remember this memorandum quite well. I would like to ask the committee to consider calling the supervisor and the

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employee who have their names blanked out to ask them to submit documents to reflect whatever their recollections are.

Mr. SIKORSKI. We'll be calling a member of the lead team, Doctor Vance. If there is no objection, that memo will be inserted in the record.

Mr. ROWLAND. There is some objection, Mr. Chairman.

Mr. SIKORSKI. You don't have the right to object about entering documents into the record.

Mr. ROWLAND. You don't have a quorum here, Mr. Chairman, and you——

Mr. SIKORSKI. Mr. Rowland, you're out of order. No one has asked you a question.

[The information follows.]

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U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

AUG 12 1982

MEMORANDUM FOR: R. LEONARD VANCE, Director
Office of Health Standards

FROM: THE LEAD TEAM

SUBJECT: Concern over the Characterization of the Lead Team's Work

As members of the lead team who have worked very closely with over the past 18 months and have carefully reviewed and approved every document transmitted to supervisors, we wish to advise you that we take very seriously your characterization of the lead team's draft proposal. We refer to your notification to supervisor in late July 1982 that you considered the boilerplate language she had inserted in the preamble to the draft proposal to be "communistic" and your reiteration of these criticisms to on August 5, adding that what she had written sounded as if she had been "trained in Moscow."

The relevant language, which simply states that federal regulation is necessary because of imperfections and failings in the capacity of the free market to internalize costs to the public of excess occupational exposure to lead, is effectively mandated by the Interim Regulatory Impact Analysis Guidelines established by the Office of Management and Budget.

More importantly, describing language and/or a person as "communistic" in our society is generally regarded as politically offensive, disparaging, and perhaps slanderous. The use of a label such as this is not in keeping with the principles of the Constitution, the nature of the civil service, and the applicable collective bargaining agreement.

With all due respect we wish to advise you that we consider these acts unprofessional and improper. We further request that within the scope of your professional duties as an OSHA official you refrain in the future from making such characterizations.

cc: Anthony Goldin
Mary Ellen Weber
Frank White

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Mr. SIKORSKI. I know, Mr. Rowland, you're not comfortable listening to this kind of thing.

Mr. ROWLAND. This happened before I was here.

Mr. SIKORSKI. Dr. Vance, have you ever used the word "communistic" in reference to a draft that was presented to you?

Mr. VANCE. Mr. Chairman, I respectfully request an opportunity to consult with Labor Department counsel here for a minute. As you pointed out, we were provided a copy of the rules of the committee prior to the time that we——

Mr. SIKORSKI. If you want time to consult with counsel, go ahead.

Mr. VANCE. OK. Thank you.

[Brief pause.]

Mr. SIKORSKI. You asked for time to consult with counsel. Are you going to do that?

[Brief pause.]

Mr. SIKORSKI. While you are talking with counsel, we will recess to take care of the vote.

Mr. VANCE. Thank you, sir.

[Recess.]

Mr. SIKORSKI. The subcommittee will again come to order.

I note the presence of a quorum.

Dr. Vance, I believe my question to you was, do you deny referring to language written in the preamble of the lead standard draft as "communistic?"

Mr. VANCE. No; I don't deny that. I said something at that time. My exact language I wouldn't recall.

I would like to note that this was an August 12, 1982, memorandum.

Mr. SIKORSKI. Right, I referred to that.

Mr. VANCE. And the letters that you delivered to me a week ago gave me no inkling that I was going to be talking about this subject matter. And I haven't reviewed the memorandum or any of the events that led up to that or even any of the old papers on the lead standard. The lead standard hasn't been an active project for 1 year.

Mr. SIKORSKI. We are not talking about the substance of the lead standard. I appreciate your situation, and we are in a similar situation with regard to things that are raised with us as we go along. In this context of fear that has been communicated to us, this was one thing which was raised. There were others which we will get to later. And I appreciate that the lead standard is a complex and important undertaking. But we don't have jurisdiction over OSHA's involvement in that lead standard except as it relates to civil service issues.

Mr. VANCE. I understand that, Congressman. My only point is that all events that are referred to here are events that occurred essentially 3 years ago. And I haven't even participated in any activities that related to the lead standard or the material that this discusses in over 1 year.

I think I ought to also note that Mr. Rowland and Mr. Meadows were nowhere around in August 12, 1982, just for their benefit and for the record.

Again, I really ask the committee to talk to the supervisor and the employee. I would prefer not to name them in the record right

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now, for their sake. And get statements from them and reflecting whether or not they believe there was any kind of a climate of fear that arose out of this.

Mr. SIKORSKI. I appreciate that, and we will take your suggestions very seriously.

My next question, in that you don't deny having used that phrase, do you deny stating that this supervisor had written language that sounded as if she had been "trained in Moscow"?

Mr. VANCE. I have no recollection, really, of what would have happened back in July 1982. I am not going to deny it.

Mr. SIKORSKI. OK. Do you recall receiving this memorandum at some time in 1982?

Mr. VANCE. Yes; I remember that.

Mr. SIKORSKI. And do you recall discussing the issues raised in this memorandum with the lead team subsequent to this memorandum being given to you?

Mr. VANCE. I remember meeting with the lead team on this. I agree with some of the language. While the recess was going on, I read through it very carefully; and I agree completely with the statement here by the lead team that language describing language and/or a person as communistic in our society is generally regarded as politically offensive, disparaging, and perhaps slanderous. The use of a label such as this is not in keeping with the principles of the Constitution, the nature of the civil service, and the applicable collective bargaining agreement.

We talked about locker room talk a while ago. This really is locker room talk. It certainly has no place in this. And I subscribe to the paragraph that is contained in the memorandum to that effect.

Mr. SIKORSKI. I agree with that as well. They also state that:

The relevant language

which you had termed as communistic

simply states that Federal regulation is necessary because of imperfections and failings in the capacity of the free market to internalize costs to the public of excess occupational exposure to lead, is effectively mandated by the Interim Regulatory Impact Analysis Guidelines established by the Office of Management and Budget.

And in fact the language was considered boilerplate OMB language, was it not?

Mr. VANCE. Well, that's what the memorandum states. Given a reasonable period of time, I can look back through the files that we have in the agency on the lead standard and probably find that language of the draft preamble and submit it for the record simply so the record will be very clear on what that language was.

Mr. SIKORSKI. What in the world would prompt you to use this kind of language? It's not an innocuous statement to call something communistic and the person who wrote it as sounding as if they had been trained in Moscow.

Mr. VANCE. Well, this was in August of 1982 that the memorandum was written that refers to events that occurred in July of 1982. I came to work for Federal OSHA in April 27, 1982, a red letter day in my history, I might add. I was pretty naive about the hard ball that is played in this town and the seriousness with which absolutely every word that one speaks is taken. It was re-

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flected in the newspaper articles that I understand were written about Mr. MacKenzie's remarks about untutored people who come to Washington in positions of a certain degree of power and not realizing what the consequences may be of their acts.

I have been tutored since then quite thoroughly.

Mr. SIKORSKI. But the words "communistic" and "trained in Moscow" aren't, you know, words that are in everyday ordinary usage in conversations, inside or outside Government.

Mr. VANCE. They're in everyday usage in Southside, VA, where I come from.

Mr. SIKORSKI. Well, maybe that could be a problem that we're getting at here. Do you think you're dealing with disloyal employees?

Mr. VANCE. Absolutely not, absolutely not, no question about it. And besides that, as I say, I understand the seriousness and the great care that one must take in phrasing any statement that one makes now. I didn't realize that a month or two months after I came to work in Washington, after having worked out in a relatively obscure bureaucracy in the middle of nowhere.

Mr. SIKORSKI. I find the situation, frankly, quite incredible. We have a recurring theme, at least to me, of employees being called troublemakers or problem employees, and being called "Communists" and "trained in Moscow", creating an atmosphere of fear and intimidation. And we're going to have testimony in the next panels discussing just that.

People at OSHA, quite frankly, were afraid to talk about these things in public. They did talk to subcommittee staff in confidence. They are afraid just simply of losing their jobs. And I don't understand how you can expect to get good work out of these people under those circumstances. More is at stake than jobs at OSHA and the well-being of a few civil service employees there. We are talking about the enforcement of health and safety standards and laws affecting 70 million Americans in 4.5 million workplaces.

Mr. ROWLAND. May I respond?

Mr. SIKORSKI. Yes.

Mr. ROWLAND. Mr. Chairman, you interrupted me because you had to go get a vote earlier. I wanted to explain——

Mr. SIKORSKI. No, I interrupted you because you were out of order.

Mr. ROWLAND. No, I am not talking about the objection. I am talking about earlier when I was testifying and you had to go vote. And I was talking about——

Mr. SIKORSKI. That was not the last vote. That was 2 votes ago.

Mr. ROWLAND. I realize that but then I didn't testify after that.

Mr. SIKORSKI. OK.

Mr. ROWLAND. I wanted to explain to you that this conference was a very upbeat conference. The conference was rated very, very successful by the participants. The professor who conducted the last session thought it was the best conference he had ever been to. The spirit was very open; communication was good.

The professional people that you are concerned about, after this memorandum—and it isn't a memorandum, no date, no name, nothing, it's just a piece of paper. To call it a memo is too much. But since this was circulated, our people are very quiet around

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there. There's an atmosphere in which they don't want to talk to anybody. And I am not talking about the political people; I am talking about the career people. This memorandum and this hearing does not hurt me, Mr. Chairman, it hurts this agency. It is unwarranted. This is an anonymous statement that is incorrect. And I can't let the hearing go——

Mr. SIKORSKI. I think the record reflects what is correct and incorrect about that.

Mr. ROWLAND. Nobody has testified it is correct yet, Mr. Chairman. Everybody says it's wrong. Everything else in anonymous paper——

Mr. SIKORSKI. I think the record reflects what the testimony is. And whatever characterization you choose to give it, it certainly isn't the one I heard up here.

Mr. ROWLAND. We have not heard anything from any witness, Mr. Chairman.

Mr. SIKORSKI. Mr. Meadows spoke directly to points in that memorandum, and had a failing memory with regard to other points.

Mr. ROWLAND. Well, I can't even get a statement out, Mr. Chairman, without you interrupting me. Excuse me.

I am trying to say that the context of this, the meaning of this is totally distorted from the words that Mr. Meadows said he said.

Mr. SIKORSKI. Well, that's your opinion, Mr. Rowland, and I disagree with that opinion. I listened to the testimony. I was here in the same room. Mr. Meadows admitted having used words that are repeated in that memorandum, which you say is wholly erroneous. And Mr. Meadows admitted a failure of memory with respect to large sections of that memorandum.

Mr. ROWLAND. Mr. Lake is here, and others are here that are career civil servants who would explain the atmosphere of the meeting and what was in here and what wasn't that was said.

Mr. SIKORSKI. Mr. Rowland, my staff has spoken to a number of OSHA employees and officials. There is rampant, at OSHA, a rumor about remarks you allegedly made at a recent management meeting. I think the matter is very serious, otherwise I would not be relating the statement. Virtually everyone offered the same statement. They told us that at a meeting of top management officials, including then Department of Labor Acting Secretary Ford B. Ford, that you made the following statement. And I am quoting it as it was given to us: "OSHA is full of Commies, and I'm going to root them out and cut their nuts off."

Mr. ROWLAND. Absolutely false, Mr. Chairman.

Mr. SIKORSKI. You deny making any such statement?

Mr. ROWLAND. I do.

Mr. SIKORSKI. You deny ever attending a meeting where any such comment was made?

Mr. ROWLAND. I have not heard that comment at any meeting.

Mr. SIKORSKI. Do you deny ever making the statement OSHA is full of Commies?

Mr. ROWLAND. I do.

Mr. SIKORSKI. That there are Commies at OSHA?

Mr. ROWLAND. You know, I have heard other people at OSHA say there are Commies in OSHA in a joking way, Mr. Chairman.

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And I'm not going to say I haven't said, yes, you're probably right, or something like that at one time. But I do not recall ever saying it, no. I have heard the statement, yes.

Mr. SIKORSKI. Have you ever made the statement that you were going to root these people out?

Mr. ROWLAND. Absolutely not. I have never said anything like that.

Mr. SIKORSKI. Anything of that nature?

Mr. ROWLAND. No.

Mr. SIKORSKI. Then you are suggesting that people we have talked to, managers and employees, are fabricating this story?

Mr. ROWLAND. Mr. Chairman, you're throwing anonymous statements at me. And, I might add, assuming——

Mr. SIKORSKI. No, I am not. I just want it clear. If what you're saying is the truth, you have a right to say it categorically, absolutely for the record. And that is what I am giving you the opportunity to do.

Mr. ROWLAND. That's what I did.

Mr. SIKORSKI. OK.

When people use this phrase jokingly, that there are Commies at OSHA, who were these people?

Mr. ROWLAND. I don't think I should say that, Mr. Chairman.

Mr. SIKORSKI. Well, I——

Mr. ROWLAND. You are protecting your people, and I don't think I should say who said something like that.

Mr. SIKORSKI. You refuse to answer who made these comments?

Mr. ROWLAND. I am not sure that I would be accurate if I made a guess. I don't know.

Mr. SIKORSKI. Mr. Rowland, you have just testified that you have heard people use that phrase or similar phrases in what you appreciated as a joking fashion.

Mr. ROWLAND. That's correct.

Mr. SIKORSKI. And you may have joined in assenting——

Mr. ROWLAND. I may have used the same phrase at one time or another, definitely not in the way you say it.

Mr. SIKORSKI. You understand, the phrase as it's being communicated to us came through people who had heard about it being used. So, we are attempting with your assistance to understand how it was used and clear up any problems.

Mr. ROWLAND. I just said that I never made that statement at any meeting, especially any meeting with Ford B. Ford.

Mr. SIKORSKI. You also said that you may well have used that statement in a joking manner.

Mr. ROWLAND. Certainly.

Mr. SIKORSKI. OK. I am asking you who else made that statement in a joking manner that you are aware of?

Mr. ROWLAND. I have heard people many times in my life, but I cannot say who at this time; and I am not going to try to guess at anybody. I might be inaccurate.

Mr. SIKORSKI. So, you haven't heard people use it?

Mr. ROWLAND. I have.

Mr. SIKORSKI. But you don't recall who they are?

Mr. ROWLAND. No, not with the definiteness to tell you, no.

Mr. SIKORSKI. And that means what?

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Mr. ROWLAND. Just what I said. I would have to guess, and I'm not going to guess.

Mr. SIKORSKI. When they use this term, and you use this term, in a joking fashion, who were you referring to?

Mr. ROWLAND. I don't recall, Mr. Chairman.

Mr. SIKORSKI. What kind of people were you referring to?

Mr. ROWLAND. I'm not even talking about recent times.

Mr. SIKORSKI. I am not asking about time. I am asking about who. What kind of people were you referring to in this joking manner?

Mr. ROWLAND. I can't recall, Mr. Chairman.

Mr. SIKORSKI. Could they be these troublemakers or these problem employees that have been referred to by others?

Mr. ROWLAND. Absolutely not. I was not referring to OSHA. And that word troublemaker I have never heard used as it is in this statement, ever. Nobody at the conference used it, to my knowledge. Everybody denies ever hearing the word.

The personnel actions discussed at that conference, Mr. Chairman, had no relation whatsoever to so-called whistleblowers or troublemakers, as you're saying. The personnel problems discussed were management problems, of employees who had misconduct charges such as theft or performance problems of lack of skill or poor performance in their work.

Mr. SIKORSKI. That's what you testified to in your opening statement. Why then would "take names" be a logical part of that conference, because these people already——

Mr. ROWLAND. I don't know any——

Mr. SIKORSKI. Let me finish, Mr. Rowland.

If these people are already identified and have been assisted, as you state is the policy there, to overcome their difficulties and make them more efficient workers, why would in that phrase "kick ass and take names" would "take names" be a part of it?

Mr. ROWLAND. I don't know, Mr. Chairman. I don't know who said it first. It got to be a call letter; that is what it amounted to.

Mr. SIKORSKI. I would suggest that your response doesn't make much logical sense in the context that you now place it.

Let me give you an example on this problem with problem employees or troublemakers or Commies, even in a joking fashion. Late last March you were sent a memo from the team of specialists who were charged with writing the field sanitation standard. These professional experts on the standard wrote expressing their concern over your directing them to write two new versions of the standard, one to substantially weaken it, and the other to kill it altogether.

They told you that there was no basis for them to advise that the standard be weakened or not be issued. Finally, they told you that, "we firmly believe the agency is obligated to extend to fieldworkers protection from the hazard of poor sanitation at the agricultural worksite comparable to that OSHA extends to all other employees. Any other course, we are convinced, can only bring discredit to the agency and ourselves."

Mr. Rowland, these employees wouldn't be employees that would be the subject of jokes or using the word Commie or any other reference to a troublemaker or problem employee, would they?

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Mr. ROWLAND. I have never joked about those people at all that way.

I have a copy of that. I know what you're talking about. These people, two of them are my employees; the rest are not even my employees. But no action has been taken, and nothing has been said to these people.

Mr. SIKORSKI. Do you know a Dr. Waugh?

Mr. ROWLAND. I do not.

Mr. SIKORSKI. Mr. Meadows, do you?

Mr. MEADOWS. No.

Mr. SIKORSKI. Dr. Vance, do you?

Mr. VANCE. Yes.

Mr. SIKORSKI. Who is she?

Mr. VANCE. She is a physician.

Mr. SIKORSKI. What is her relationship, if any, with OSHA?

Mr. VANCE. At various times she has worked as a contract physician for OSHA. She has had several contracts, one with the Directorate of Health Standards.

Mr. SIKORSKI. Let me at this point recognize for questioning the gentleman from New York.

Mr. GILMAN. Thank you, Mr. Chairman. I appreciate your letting me intervene. I may have to return to the floor. We have a measure on the floor.

Mr. Meadows, with regard to Dr. Waugh, I have been informed that Local 12 of the American Federation of Government Employees is concerned about the termination of Dr. Waugh, who is apparently a consultant according to the testimony that we have just heard. Could you give us a little background on the basis of her termination?

Mr. MEADOWS. I don't know about it. You would have to ask Mr. Rowland.

Mr. GILMAN. Whoever is familiar with that. Mr. Rowland?

Mr. ROWLAND. Yes, I am familiar with Dr. Waugh. The question to me was whether I knew her. I don't know her. I have never met her, never seen her, but I am familiar with her.

She was on a contract to work on the field sanitation team. The decision on field sanitation was made in early April, or the middle of April. At that time, her work was completed. She is not an employee. She was a contractor. She has been on contract three times since I have been at OSHA in the past 9 months. All were $10,000 contracts. Our contract policy is that contracts terminate either with the work or the time limits set upon the work or the dollar amount.

Her first contract was terminated with over $2,000 remaining on the contract because there was no more need for her work. At that time, she complained about that. She was subsequently hired again for another $10,000 contract. Nobody held that against her if she didn't like it. She completed that contract and was paid the full amount of $10,000.

In this case, her work was completed when the field sanitation standard was completed. She actually had a free ride of probably 10 days or better that she was paid for no work. So, our policy is to terminate these contracts when there is no work to be done, be-

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cause the Government isn't in the business of giving money to people for nothing.

There was only some $300 remaining on her contract at that time. There should have been another $1,000 saved. So, our fault here is not saving another $1,000, not in terminating her with $300 left.

There have been some 15 other contractors like this that have been terminated since I have been there, with money left over——

Mr. GILMAN. In your opinion then, was she summarily fired?

Mr. ROWLAND. She wasn't fired. Her contract was ended because there was no more work to do. As I say, she was probably paid $1,000 for no work.

Mr. GILMAN. Mr. Rowland, have you done anything to try to stifle any dissent or to punish anyone who disagrees with any of the policies in OSHA?

Mr. ROWLAND. Absolutely not.

Mr. GILMAN. Have there been any disciplinary actions that you have brought about because of policy differences?

Mr. ROWLAND. I have not had any discipline actions initiate with me or in my whole office. There has been one action decided within the office, not by me, by another person. In that case, he was the deciding officer. The employee was not terminated in that case, in spite of recommendation.

Mr. GILMAN. Were you familiar at all with the material that was being prepared for the Williamsburg conference before the conference, had you seen any of that?

Mr. ROWLAND. I read through the material. Now, the subject of this hearing was not outlined in the material. That's why I say it was a bull session. The professor outlined topics, sent these teams out, and I was not present that time.

Mr. GILMAN. When was this first brought to your attention?

Mr. ROWLAND. Well, I came back at the end of the conference for the last session on the last day, sort of a wind-up. And I saw most of these charts scattered around the room at that time. But I did not participate in the sessions that have been described where they broke out and discussed various topics.

Mr. GILMAN. You opened up the session a few days before?

Mr. ROWLAND. That's correct.

Mr. GILMAN. And then you came back for the termination of them?

Mr. ROWLAND. That's correct.

Mr. GILMAN. After this was brought to your attention, did you have any meeting with anyone who was responsible for that action at the session?

Mr. ROWLAND. Well, I asked what KATN meant. It was explained to me that people were concerned about the discipline actions, the various personnel actions that had been recommended from the field, that they weren't getting backup in Washington. That's the way the subject came up.

The category, "take names," is really not even applicable here, because it was just a nickname for take firm personnel action; that is the way it was explained to me. So, I had no occasion to do anything about it. There was certainly no atmosphere that was scary in Williamsburg. In fact, it was a very positive, upbeat conference

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when I arrived. And it was described by the professor—whom I didn't pick, by the way; the career people picked him. It was a total nonpolitical conference. It was described by him as the best conference he had ever had.

It was a very upbeat conference with high morale. Nobody complained about anything.

Mr. GILMAN. When was this memo that had been circulated, first brought to your attention?

Mr. ROWLAND. I don't know the exact date, but it just suddenly appeared. Someone brought it to me and said. "This is being circulated all over the office, and we understand it is being distributed on the Hill and also with the media." The next thing I heard about it is when the Washington Post wrote about it.

Like I say, everybody I talked to says it is not accurate. I have tried to talk with everybody who was there.

Mr. GILMAN. You conducted some interviews yourself with regard to the memorandum?

Mr. ROWLAND. I brought my managers together. I asked them what they knew about it and to tell me. And everybody agreed that the words like "troublemaker" were never mentioned, that the emphasis was to follow the laws and regulations, not disregard them.

Mr. GILMAN. Did you talk to any of the attendees to try to determine what was said?

Mr. ROWLAND. Well, that's what I am talking about. They were mostly management level people, but I have talked to them in the last few days.

Mr. GILMAN. Did any of those attendees complain about the atmosphere or what was said?

Mr. ROWLAND. No, on the contrary. Everybody thought it was a very good conference. They left feeling very good, feeling like communications were more open and much better. However, since that time, I have had several of them express to me that they will never say anything in front of anybody else again. They will be very closemouthed.

It has put a chill on the office. Like I say, it is not hurting me. It is hurting the career people and it is hurting the agency, because it has caused damage. Those that weren't there, below the management level, there is some who feel there now, they think, well, it's true. And they're worried about it. It's totally untrue, the implication of that memo.

Mr. GILMAN. Have you issued any memorandum to dissipate the atmosphere created by this memo?

Mr. ROWLAND. Yes, sir, I have. And I have asked that it be admitted to the record.

Mr. SIKORSKI. Without objection, it will be entered right now, if you would like.

[The information follows:]

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U.S. Department of Labor

April 29, 1985

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

MEMORANDUM FOR: NATIONAL OFFICE EXECUTIVE STAFF
REGIONAL ADMINISTRATORS

FROM: ROBERT A. ROWLAND
Assistant Secretary

SUBJECT: Policy Statement Regarding the Roles of Executives, Managers, and Supervisors

The policy of this Agency is and always has been that, as executives and managers, we are given the responsibility for the successful accomplishment of the Agency's mission. Part of that responsibility is to assure that all staff members are provided reasonable work assignments commensurate with grade levels as well as assuring that ethical standards of conduct are maintained. In order to do this, we must consistently put forth the effort to develop, train, and motivate all staff to be valuable parts of the workforce. When necessary, we must examine and identify reasons for performance deficiencies which impact on the efficient operations of the office and work with staff to correct and alleviate such deficiencies so that each staff member may contribute his or her meaningful and fair share of work towards attainment of the Agency's success. Should these efforts fail, in whole or in part, steps must be taken to address such inefficiencies. If confronted with a situation in which a staff member who, after such reasonable efforts, does not or cannot adequately perform, the situation must be dealt with in accordance with existing and accepted regulations and procedures. Misconduct which impacts on the efficient and effective accomplishment of our work must also be appropriately addressed.

In your best judgment, if you or any of your subordinate supervisory or managerial staff believe that a certain action is required to address misconduct or inadequate performance, we encourage you to act in a manner you believe will promote the efficiency of the service. Your actions must be reasonable and in accordance with U.S. Office of Personnel Management and Department of Labor regulations and procedures. You are reminded that the DOL Office of the Inspector General is available to you for conducting investigations on matters of alleged serious employee misconduct. Guidance and assistance should be sought both within the Agency provided by your own administrative staff, as well as in OASAM offices where appropriate, to help you properly address matters of this nature.

OSHA has gone on record before, and it is important to reinforce here, that we absolutely support the prohibitions regarding any actions by management officials which may be intended to harass, intimidate or interfere with the rights of the employees to act within the law if and when they may not agree with agency decisions or actions.

We all have responsibilities to assure that each employee's successful performance contributes to the accomplishment of the Agency's work. I trust that this will clarify our Agency's position in these most sensitive and vital arenas. Please communicate this to your subordinate staff.

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Mr. GILMAN. Could you read that memorandum?

Mr. ROWLAND. Yes, sir, I will.

Mr. GILMAN. Would you indicate the date you issued that memorandum?

Mr. ROWLAND. The date is April 29.

This memorandum was prepared at my direction. I was out of town. It was read to me over the telephone, and I said go ahead and put my name on it and distribute it.

Mr. GILMAN. This is at your direction?

Mr. ROWLAND. It was at my direction.

The policy is this Agency is and always has been that, as executives and managers, we are given the responsibility for the successful accomplishment of the agency's mission. Part of that responsibility is to assure that all staff members are provided reasonable work assignments commensurate with grade levels as well as assuring that ethical standards of conduct are maintained. In order to do this, we must consistently put forth the effort to develop, train, and motivate all staff to be valuable parts of the workforce. When necessary, we must examine and identify reasons for performance deficiencies which impact on the efficient operations of the office and work with staff to correct and alleviate such deficiencies so that each staff member may contribute his or her meaningful and fair share of work towards attainment of the agency's success. Should these efforts fail, in whole or in part, steps must be taken to address such inefficiencies. If confronted with a situation in which a staff member who, after such reasonable efforts, does not or cannot adequately perform, the situation must be dealt with in accordance with existing and accepted regulations and procedures. Misconduct which impacts on the efficient and effective accomplishment of our work must also be appropriately addressed.

In your best judgment, if you or any of your subordinate supervisory or managerial staff believe that a certain action is required to address misconduct or inadequate performance, we encourage you to act in a manner you believe will promote the efficiency of the service. Your actions must be reasonable and in accordance with U.S. Office of Personnel Management and Department of Labor regulations and procedures. You are reminded that the DOL Office of the Inspector General is available to you for conducting investigations on matters of alleged serious employee misconduct. Guidance and assistance should be sought both within the agency provided by your own administrative staff, as well as in OASAM offices where appropriate, to help you properly address matters of this nature.

OSHA has gone on record before, and it is important to reinforce here, that we absolutely support the prohibitions regarding any actions by management officials which may be intended to harass, intimidate or interfere with the rights of the employees to act within the law if and when they may not agree with agency decisions or actions.

We all have responsibilities to assure that each employee's successful performance contributes to the accomplishment of the agency's work. I trust that this will clarify our agency's position in these most sensitive and vital arenas. Please communicate this to your subordinate staff.

Now, this is not new, I might add. This is existing policy—has been all along. And in that line, I want to say that, to the litany of complaints that I saw in the testimony of the next witness--not the next one, but the labor union president—I have not had any complaints from employees. And I am not aware that my deputies have or anybody else. The inspector general is available. I have turned over one matter to him myself. He is there. He can take them. I don't think he has had any occasion. So, we have not had any complaints.

Mr. GILMAN. With regard to this anonymous memorandum that has troubled you, had you found these facts to be accurate, would you have undertaken some disciplinary proceeding?

Mr. ROWLAND. Yes, sir, I would have.

Mr. GILMAN. In other words, you disagree wholeheartedly with what is set forth in this memorandum?

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Mr. ROWLAND. That's not my policy and never would be my policy. And I have been up here almost 4 years, and I have been in a managerial position; and I have never behaved remotely like that memorandum.

Mr. GILMAN. Did you confront Mr. Meadows with this memorandum?

Mr. ROWLAND. I asked him about it, yes, sir.

Mr. GILMAN. Did you ask him about the veracity of what was set forth?

Mr. ROWLAND. I asked him, and he gave me a very satisfactory explanation about it. And I might add that I asked other people. I asked my senior managers, career people. In fact, most of them were much stronger in their feelings about this, the inaccuracy, than Mr. Meadows; because there are some words in there, he said, but they are totally out of context.

Mr. GILMAN. And had you found it to be a factual narration of what occurred, you then would have undertaken a disciplinary proceedings against Mr. Meadows? Is that correct?

Mr. ROWLAND. I would have taken some action, yes, sir.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

Mr. SIKORSKI. Thank you.

Dr. Vance, when did you receive Mr. Rowland's memo that he just read into the record?

Mr. VANCE. I would say 2 or 3 days after the 29th. The 29th is a Monday. I would say that I would have gotten it Wednesday or Thursday in the mail.

Mr. SIKORSKI. You didn't get it around 11 o'clock on the morning of Friday, May 3?

Mr. VANCE. Possible.

Mr. SIKORSKI. It's possible?

Mr. VANCE. Yes. I don't recollect.

Mr. SIKORSKI. Would you check that and provide us with that?

Mr. VANCE. I certainly will.

Mr. SIKORSKI. It's our understanding that is when you received it.

Mr. SIKORSKI. Did you pass that on to your division heads in health standards?

Mr. VANCE. Yes, I did.

Mr. SIKORSKI. When did you do that?

Mr. VANCE. The same day.

Mr. SIKORSKI. About 11:30 on Friday, May 3, is what we understand.

Mr. VANCE. That may be correct. I will check it.

Mr. SIKORSKI. Mr. Rowland, it's dated the 29th. Do you know when it went out?

Mr. ROWLAND. No, I don't. I was not in town all that week. But I do know that it was around the 29th that I approved it, because my secretary read it to me, asked if I wanted it sent by Federal Express; and I said, no, go ahead and sign it, type it up and sign it. I don't know when it was distributed. But it definitely was before May 3, because I would not have received it by Federal Express on May 5 because I was coming back Monday. It was early in the week.

Mr. SIKORSKI. Pardon me. I didn't understand that.

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Mr. ROWLAND. It was early in the week, because I was returning on Sunday, and May 3 was Friday, I believe. And she offered to send it Federal Express to me and sign it and send it back. So, it had to be the first of the week.

Mr. SIKORSKI. Dr. Vance, OSHA's field sanitation standards have been the subject of considerable controversy. I don't understand why, because, as I understand them, they require over a half million agricultural workers be provided drinking water and basic sanitary facilities at their worksite.

Without objection, I would like to introduce into the hearing record a memo to Mr. Rowland signed by the entire field sanitation standard team in March of this year, which I quoted from prior.

Mr. Rowland, do you have something?

Mr. ROWLAND. Yes, sir. I would like to make a comment about that, because——

Mr. SIKORSKI. A comment about what?

Mr. ROWLAND. About what you're introducing.

Mr. SIKORSKI. Without objection, it is so entered.

[The information follows:]

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U [illegible]

[illegible] Field Sanitation Team

Maureen Kelleher Edick

Claudia H. TharArber

Dyann A. Waugh

Robert E. Donadio

Richard M. Pfeffer

RE: A Final Field Sanitation Standard

As members of the team assigned to the field sanitation rulemaking, we have been responsible over the past several years for drafting the Advance Notice of Proposed Rulemaking (ANPR), the Notice of Proposed Rulemaking, the final standard, and most recently the alternative determination not to issue a final standard. As an integral part of these responsibilities, we have summarized and analyzed the pre-hearing comments, represented the Agency in carrying out the public hearings, and summarized and analyzed the testimony and post-hearing submissions. We are, in short, your professional experts on field sanitation.

As such, we feel it necessary at this time to formally advise you that in our professional opinion the attached draft of a final field sanitation standard is the minimum standard that the rulemaking record will support. Because we have been specifically and expressly directed by several of your representatives to draft a determination that no standard will be issued, we also must advise you that in our professional opinion the record will not support such a determination. Furthermore, because we have been specifically and expressly directed by these same representatives to modify the attached draft of a final standard to permit employers the option of providing employees with transportation to sanitation facilities (and water ?) located outside the field, we also must inform you that in our professional opinion such an alternative method of compliance would severely compromise a final standard, is not cost effective and cannot be justified by the evidence in the record. The heart of the proposed standard and of the attached draft final standard is the requirement that the necessary facilities be provided by employers at the field worksite.

As public servants working for an Agency that operates under an act of Congress, who are familiar with the record in the field sanitation rulemaking, we firmly believe the Agency is obligated to extend to fieldworkers protection from the hazard of poor sanitation at the agricultural worksite comparable to that OSHA extends to all other employees. Any other course, we are convinced, can only bring discredit to the agency and ourselves.

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Mr. SIKORSKI. Mr. Rowland, why don't you make your comment?

Mr. ROWLAND. Well, I would like to point out that there are a lot of misstatements in here. It states a lot of things that are not completely accurate.

Mr. SIKORSKI. Why don't you start from the top and go through every one of those inaccuracies?

Mr. ROWLAND. Well, a lot of these people were not assigned to the team like they say from the beginning. Some of them were fairly new comers.

Mr. SIKORSKI. Were they on the team at the date of the memo?

Mr. ROWLAND. They were on the team at that date.

But the team captain did not sign this. And at least six other members did not sign it. There are not any of these people in the health standards division that Mr. Vance heads up. The people in his division who are on the team did not sign this.

And I want to say that everything that is in here, and the views expressed here, had been expressed to me by the team leader. He briefed me 2 days and expressed every view in here. And I was fully aware of these views. This was not a necessary memorandum, in other words. And as a lawyer, you can——

Mr. SIKORSKI. What is inaccurate about this memorandum?

Mr. ROWLAND. Well, they represent that they are the team that had been working from the start of the standard and they're all experts. We have got two lawyers on here, one contractor, and two employees that are not on the health standards team that had a limited role in advising the team.

Mr. SIKORSKI. So, how many people on the team did not sign this?

Mr. ROWLAND. The leader of the team who is in Health Standards did not.

Mr. SIKORSKI. Who is that?

Mr. ROWLAND. Mr. Gass. And his people working under him in health standards did not sign it.

Mr. SIKORSKI. Are they on the team?

Mr. ROWLAND. They headed the team, yes.

Mr. SIKORSKI. How many people is that?

Mr. VANCE. There were two people working with this project in health standards. There was an economist as well. And I am not sure who else in other directorates. Most standards projects have representatives of every directorate on it.

Mr. SIKORSKI. How many people on the team didn't sign this memo?

Mr. VANCE. To my knowledge, two.

Mr. SIKORSKI. OK. Mr. Gass and——

Mr. VANCE. The economist. I can't recall the economist's name.

Mr. SIKORSKI. So, you have named two people who did not sign the memo, one of whom made the same points to you orally.

Mr. Rowland, is there anything else that you find inaccurate about this memorandum?

Mr. ROWLAND. I want to point out Mr. Gass, the team leader.

No, I don't find this as an opinion, I don't find a lot of it accurate, but it's an opinion that I had already gotten; that is my point. These people are not revealing something to me at all. This was not designed for me——

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Mr. SIKORSKI. From my reading of it, they are apparently operating from a position of not knowing what your state of mind is, what the state of your information is, and were trying to summarize their situation and communicate that to you. In fact, as I recall, they said, if you don't have this information, we want to provide it. If you do, we want to underscore our opinion.

And you're saying you knew all this, and the memo was unnecessary?

Mr. ROWLAND. Yes, and I think they knew it, also, because their team leader had given their opinion.

Mr. SIKORSKI. So, maybe for the sake of accuracy they wanted to reflect their state of mind—and their concern.

But you have no example, nothing that you could typify as inaccurate.

Mr. ROWLAND. It's opinion. It's their opinion.

Mr. SIKORSKI. OK.

Dr. Vance, in the memo the team takes strong issue with Mr. Rowland's decision not to issue a standard. They advised him, "the minimum standard that the rulemaking record will support" was a stronger standard than either of the two versions suggested by OSHA managers.

They go on to state that, since they have been "specifically and expressly directed by several of your"—meaning Mr. Rowland's—"representatives to draft a determination that no standard will be issued, we must also advise you that in our professional opinion the record will not support such a determination."

You are aware of this memo, are you not, Dr. Vance?

Mr. VANCE. I am aware of the memo.

Mr. SIKORSKI. It made its way to the press, as I understand it, and part of it was referred to in an April 13 article in the New York Times. Is that correct?

Mr. VANCE. I have no knowledge of that.

Mr. SIKORSKI. Were you and other OSHA managers concerned that the memo had been leaked to the press?

Mr. VANCE. No, I don't remember any discussions about concern that it had been leaked to the press.

Mr. SIKORSKI. Mr. Rowland?

Mr. ROWLAND. I knew it was going to the press. Everything goes to the press. The views were going to be there in whichever form it was desired by them. I didn't have any concern about it.

Mr. SIKORSKI. Mr. Meadows?

Mr. MEADOWS. I didn't have any discussion about it. That's not my area.

Mr. SIKORSKI. Dr. Dyann Waugh was a member of the field sanitation team, wasn't she, Dr. Vance?

Mr. VANCE. Yes, for a period of time. She came in after another physician who had worked on field sanitation matters for quite a protracted period of time, left to go back to England.

Mr. SIKORSKI. She was the only physician on the team, in fact only the second medical doctor at OSHA?

Mr. VANCE. Well, she was the only physician on the team at the time that she served. An earlier physician had served on the team, Dr. Dennis Malcolm.

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Mr. SIKORSKI. So, among her responsibilities for this standard, as she came on board, was to determine the possible health hazards to agricultural workers and the families if proper sanitation facilities were not provided for them. Is that correct?

Mr. VANCE. Well, she was to serve as medical officer for the team.

Mr. SIKORSKI. The memo from the team expressed that concern, did it not? The memo says, "as public servants working for an agency that operates under an act of Congress, who are familiar with the record in the field sanitation rulemaking, we firmly believe the agency is obligated to extend to fieldworkers protection from the hazard of poor sanitation at the agricultural worksite comparable to that OSHA extends to all other employees. Any other course, we are convinced, can only bring discredit to the agency and ourselves."

Dr. Vance, is Dr. Waugh still a contract employee at OSHA?

Mr. VANCE. No, she is not.

Mr. SIKORSKI. And her contract was terminated when?

Mr. VANCE. Friday, April 26.

Mr. SIKORSKI. That was not the scheduled termination date of her contract, was it?

Mr. VANCE. Our contracts have termination either when all of the money is spent or when a day certain comes. At the time that she was terminated, she had one and a half days of time left in the contract, worth $270.

Mr. SIKORSKI. Was there a problem with the quality of her work?

Mr. VANCE. No.

Mr. SIKORSKI. In fact, her supervisor, Dr. Ralph Yodaiken, had suggested that OSHA could use another physician on full-time staff and that Dr. Waugh would be "an asset" to OSHA. He was told that there was no permanent position available but that her contract would be continued. Isn't that correct, Dr. Vance?

Mr. VANCE. I have no knowledge of that.

Mr. SIKORSKI. Mr. Rowland, do you have any knowledge of that?

Mr. ROWLAND. I know what you are referring to, and I have no knowledge of your letter. But I did explain about the contract termination earlier. She was also terminated on the first contract for over $2,000. It's not because of her work. It's because the work was completed. We don't try to spend the government's money when there is no work to be done.

Mr. SIKORSKI. But the truth is, she had been told that her contract was going to be continued on another project.

Mr. ROWLAND. I have no knowledge of that whatsoever. We have a committee that takes applications from our various managers for contracts. She may be up for one now, I don't know.

Mr. SIKORSKI. Maybe I mistook your representations to the gentleman from New York, but I thought you told us you were aware of the situation, even though in response to my question you said you didn't know her.

Mr. ROWLAND. No, I did not——

Mr. SIKORSKI. In fact, you did know of her.

Mr. ROWLAND. I do not know her personally.

Mr. SIKORSKI. But in fact you do know of her and represented that you were familiar with her record. And the record, if it's com-

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plete, will include these two memoranda. Without objection, both will be entered into the record. One is from Ralph Yodaiken about a permanent position at OSHA, which is a memorandum to Dyann Waugh; and one a memorandum for Patrick Tyson, the Deputy Assistant Secretary through Edward Baier, the Director of Technical Support, from Dr. Yodaiken again, concerning a medical officer, wherein he talks about renewing her contract. He states that she is considering it but is reluctant to remain on contract for obvious reasons, lack of stability. She has a dependent and is concerned about the absence of fringe benefits. "She served the agency well, is familiar with our mission, is an asset. I think you will agree it would be unfortunate if she were to leave; therefore, I urge you to assist us in offering her a permanent position."

[The information follows:]

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U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

MEMORANDUM FOR DYANN WAUGH

FROM: RALPH YODAIKEN

SUBJECT: Permanent Position at OSHA

Attached is a copy of a memorandum to Pat Tyson asking for assistance in obtaining a permanent position for you.

Mr. Baier has informed me that there is to be no other permanent positions for a doctor in this office.

I am sorry because I think, as I said in my memo, you would have been an asset. I believe, however, that the contract offer still stands, and I hope you will take advantage of that for the time being.

Attachment

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.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

MEMORANDUM FOR: PATRICK TYSON
Deputy Assistant Secretary

THRU: EDWARD BAIER
Director
Directorate of Technical Support

FROM: RALPH YODAIKEN
Director
Office of Occupational Medicine

SUBJECT: Medical Officer

As you know, the contract with the Uniformed Services University has now been terminated, Dr. Haimes leaves at the end of April and this office will be without any consulting physician.

Dr. Dyann Waugh has been on contract since July and has provided a valuable service in all aspects of our work. Currently, she is concluding what everyone agrees has been an excellent job for the Field Sanitation Standard team. In view of the fact that Drs. Haimes and Salzberg will soon be gone we have, with David Zeigler's agreement, offered to renew her contract and she is considering this but is reluctant to remain on contract for obvious reasons -- lack of stability (she has a dependent) and absence of fringe benefits. I don't think she can be faulted for hesitating.

She has served the Agency well, is familiar with our mission, and is an asset. I think you will agree it would be unfortunate if she were to leave. Therefore, I urge you to assist us in offering her a permanent position.

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Mr. ROWLAND. Let me, if I may, put this to rest and explain it again. Since I have been at OSHA, 9 months, Dr. Waugh has had three contracts. The contracts are for a definite amount of money for a job. We terminate contracts when the job is done, when the money is spent, or when the time limit that we have set runs out.

Her first contract ended on September 30, 1984. There was over $2,000 remaining on the contract. She was not fired. The contract was terminated. We terminate every contract when there is no more work to be done to benefit the government.

Mr. SIKORSKI. I understand that.

Mr. ROWLAND. She was rehired for another contract for $10,000.

Mr. SIKORSKI. When?

Mr. ROWLAND. This was on October 9, 1984.

Mr. SIKORSKI. Within 10 days afterward, she was started on a new contract?

Mr. ROWLAND. Right.

She worked at that time, I am not sure what she was doing there, but she worked all the way through January almost, of 1985. She earned $10,000. All was paid. She was hired again, even before that contract expired.

Mr. SIKORSKI. Right, before that expired, she was picked up again.

Mr. ROWLAND. Yes, on her current contract. And she was terminated on that with about $270 left because there was no work. Actually, the work ended at least 10 days before that——

The letter you are talking about I have never seen before today. The memorandum was for Patrick Tyson, my deputy. He hadn't talked to me about it. It's not dated, I might add.

She may be up for another contract. If these are current, I haven't seen it. I have never considered it. And it's not even my job to consider it. We have a committee that considers contracts, whether or not to enter into a contract.

Mr. SIKORSKI. Dr. Vance, you had Dr. Waugh call you collect at home on Friday night, didn't you?

Mr. VANCE. Yes.

Mr. SIKORSKI. And you informed her that she was terminated.

Mr. VANCE. That's correct.

Mr. SIKORSKI. That's right.

It had nothing, Mr. Rowland and Dr. Vance, to do with the fact that she signed on as a member of the sanitation team? She signed that memorandum to you.

Mr. ROWLAND. The work ended on April 12, and she was terminated on April 26. We paid her way too much money. We made an error there.

Mr. SIKORSKI. The fact that she does not yet have another contract, even though expressions had been made to her by her supervisor that such would occur, has nothing to do with the fact that she signed that memorandum as part of the field sanitation team. Is that correct, Mr. Rowland?

Mr. ROWLAND. That is correct. I know nothing about any new contract application. If she has one pending, it will be considered. I know nothing about it.

Mr. SIKORSKI. Thank you.

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I appreciate your forbearance. We had four or five votes during this hearing this afternoon.

If you have nothing else, any loose ends you want tied together, we are going to call the next two panels.

Mr. ROWLAND. I would like, if there is no objection to it, to enter into the record one of the papers which you asked us to bring up here. It is a questionnaire evaluation of that conference which I think will reflect the upbeat spirit of all the people there.

Mr. SIKORSKI. Without objection, that and the flip charts that you supplied us, will be entered into the record, as well as any other documentation that has been requested that is not in your hands at this point, including any notes or minutes made by any members, participants in that conference, either OSHA people or people that came in and participated in the conference.

TESTIMONY OF DYANN WAUGH AND PATRICIA STEWART

Mr. SIKORSKI. The next panel includes Dr. Dyann Waugh and Patricia Stewart.

I would like to thank you. I will try to move expeditiously through this panel and the next because the hour is getting late.

Ms. Stewart and Dr. Waugh, both of you have been requested to testify here today. Before you or submitted to you are rules of the House of Representatives.

Do either of you wish to have private counsel?

Dr. WAUGH. No.

Ms. STEWART. No.

Mr. SIKORSKI. Do either of you have objections to being sworn in?

Dr. WAUGH. No.

Ms. STEWART. No.

Mr. SIKORSKI. If not, would you please stand and raise your right hand?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Dr. WAUGH. I do.

Ms. STEWART. I do.

Mr. SIKORSKI. Dr. Waugh, until quite recently you were working as a consultant to OSHA on the field sanitation standard, which is a standard that determines the bathroom, hand washing facilities, and the drinking water facilities, as I understand, to be available for farm workers. The court had ordered OSHA to complete this by mid-April. Is that correct?

Dr. WAUGH. Yes.

Mr. SIKORSKI. You are a medical doctor. Is that correct?

Dr. WAUGH. That is right.

Mr. SIKORSKI. What school did you graduate from?

Dr. WAUGH. Howard University College of Medicine.

Mr. SIKORSKI. You are also a specialist in occupational health, isn't that correct?

Dr. WAUGH. That's right.

Mr. SIKORSKI. You have a degree in public health from Johns Hopkins?

Dr. WAUGH. That's right.

Mr. SIKORSKI. You also did your residency at Johns Hopkins in occupational medicine?

Dr. WAUGH. That's correct.

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Mr. SIKORSKI. What were your specific responsibilities for the field sanitation standard?

Dr. WAUGH. I attended the team meetings. I reviewed testimony from the hearings that were held at four locations throughout the country. I reviewed other portions of the record. I wrote the section on urinary tract infections, revised the section on pesticides, and I helped the team leader on the communicable disease section of the standard.

Mr. SIKORSKI. Was this your first OSHA contract?

Dr. WAUGH. No, it wasn't. I had two contracts prior to this one.

Mr. SIKORSKI. You heard Mr. Rowland testifying. The first contract covered what?

Dr. WAUGH. The first contract was out of the directorate of technical support. And the duties that were associated with it were to provide medical consultation to OSHA's regional offices, because there are no physicians working for OSHA in the field. So, we provided consultation when requested.

We responded to letters that came from individuals who were exposed to toxic chemicals as well as to physicians and other health professionals who had questions about exposures. At times we could also be assigned to a team that would be responsible for writing a standard.

Mr. SIKORSKI. And you were there as a medical doctor, with credentials in occupational health. Is that correct?

Dr. WAUGH. That's right, I have credentials in occupational health. I was within the Office of Occupational Medicine, which is under the directorate of technical support.

Mr. SIKORSKI. You are the second physician that was there?

Dr. WAUGH. There were more of us when I started.

Mr. SIKORSKI. But recently.

Dr. WAUGH. But most recently, there were only two?

Mr. SIKORSKI. OK.

You are accustomed to procedures for renewal and termination of contracts. Is that correct?

Dr. WAUGH. Based on my experience with the other two contracts.

Mr. SIKORSKI. Your recent contract was terminated in a somewhat unusual way, wasn't it?

Dr. WAUGH. Yes. I had never had a contract terminated formally at all. In the past, the first contract that I had, the fiscal year ended before all the money was spent. That was how the first one ended.

The second one ended when all the money was spent. And the third one was ended early by Dr. Vance's telephone call.

Mr. SIKORSKI. Did you get a message to call him at home, collect?

Dr. WAUGH. Yes.

Mr. SIKORSKI. And you did. And what did he say?

Dr. WAUGH. He said that my work was completed, that the agency had no further need for my services, that he appreciated the excellent work that I had done, and that there was no need for me to come in on Monday.

Mr. SIKORSKI. Had you been led to believe that you were going to get a new contract, just as you had a couple of times prior to that?

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Dr. WAUGH. Yes, I had. I had been offered an additional contract because of some changes that took place in the Office of Occupational Medicine. I was offered an additional contract by my immediate superior, Dr. Yodaiken. He had cleared that through Mr. Ziegler.

Mr. SIKORSKI. So, it came to you as a surprise when you talked to Dr. Vance at home Friday night that you had been terminated?

Dr. WAUGH. Well, it came as a surprise that I was to be terminated, although, I was beginning to hear rumors.

Mr. SIKORSKI. What were those rumors?

Dr. WAUGH. Well, I had heard, as I sat behind my partition, I heard someone come up to the office where I was working and begin to ask questions about me. I was told that someone said, who is that black woman that the front office is in such a flap about?

Then I also heard that someone—understanding that these are rumors, and you understand that rumors are rife—I also heard that someone in the front office, someone or a group of people in the front office looked at the memo and in the process of identifying individuals, said, who is this person, and that it was then said: what, she's a contractor? That was a rumor that I heard.

Mr. SIKORSKI. You are referring to the memo on field sanitation standards that was sent up to Mr. Rowland, or down. I guess, you're on the third floor and they're on the second floor?

Dr. WAUGH. That's right.

Mr. SIKORSKI. So, it was sent down to him. Is that correct?

Dr. WAUGH. That's correct.

Mr. SIKORSKI. OSHA managers didn't seem to be pleased by the memo. Is that correct?

Dr. WAUGH. It doesn't seem that they were. I did not speak to any OSHA managers in a formal fashion. I just heard rumors that it was a mistake to have sent it, and it was certainly a mistake for me to have signed it.

Mr. SIKORSKI. A political mistake, internal to OSHA, one that didn't bode well for renewal of your contract?

Dr. WAUGH. Well, it was pointed out to me that I was the most vulnerable of the people who signed the memorandum, because I was a contractor.

Mr. SIKORSKI. And you're no longer there?

Dr. WAUGH. I'm no longer a contractor.

Mr. SIKORSKI. Even though your supervisor said that you would be an asset, in fact wanted you to be a permanent employee, and you were one of only two medical doctors at OSHA. Is that correct?

Dr. WAUGH. That's correct. There were others, but their contracts were terminated due to budget considerations.

Mr. SIKORSKI. You have no knowledge of the memo being leaked to the New York Times? You did not leak it to the New York Times?

Dr. WAUGH. I did not leak the memo to the New York Times.

Mr. SIKORSKI. I am afraid, Dr. Waugh, that you may be one of the problem or troublemaker employees that have been referred to in various documents in discussions here today. Unfortunately for you and others who want to see conscientious people doing their jobs at OSHA without being pressured to violate their own sense of

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ethics or their scientific judgment, and your memo speaks for itself on that.

Do you have anything to add?

Dr. WAUGH. The only thing that I would like to say is to correct some of the accusations that were made against me, I believe it was by Mr. Rowland, I couldn't see his face, but I believe it was Mr. Rowland. He stated that I complained about the termination of my first contract. I never complained about the termination of my first contract. My first contract was terminated because the fiscal year ended before all the money was earned. And there was no way that I could complain about not getting money that I hadn't earned.

Secondly, I was never told that my most recent contract was only to work on the field sanitation standard. No one ever said to me that that was the case. No one every told me that my work would end on the date that either a denial or a field sanitation standard was issued. No one ever had told me that.

I began work on the field sanitation standard before I even got a contract from health standards. I was working on the field sanitation standard when I had a contract from the directorate of technical support.

I did work on the field sanitation standard, during the time that I had the contract from health standards. I did other work as well.

And finally, in regard to Mr. Rowland's statement that the denial was issued on April 12th and that there was a 2-week period of time for which I got paid and did nothing, that certainly is not true. There was an entire week, from the 15th through the 19th, when I was not even at OSHA. I was in Kansas City attending the American Occupational Health Conference. I certainly didn't get paid. I didn't try to get paid for a time when I wasn't even at OSHA. So, that's one week. And the next week when he claimed that I was not doing any work but I was getting paid, I wasn't working there on Monday. I didn't ask OSHA to pay me on Monday. For the rest of the week that I was there, until I was terminated on the 26th, I was doing work. It was not on field sanitation, but I certainly was working.

I just want to correct the record on those points.

Mr. SIKORSKI. Thank you. I think the record will speak eloquently to your capacities as well as to your conscience and good judgment in this matter, and not so eloquently to others' actions.

Ms. Stewart, you are a former OSHA employee. Is that right?

Ms. STEWART. That's correct.

Mr. SIKORSKI. You were with OSHA how long?

Ms. STEWART. About 7 years.

Mr. SIKORSKI. Where are you now employed, if you are?

Ms. STEWART. I am with the National Cancer Institute. I am here today as a private citizen, not representing NCI.

Mr. SIKORSKI. Very good.

While you were at OSHA, you were the team leader for the lead team. Is that correct?

Ms. STEWART. That's correct.

Mr. SIKORSKI. You were the team leader?

Ms. STEWART. Yes.

Mr. SIKORSKI. What was the lead team?

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Ms. STEWART. The lead team was a group of people from various disciplines, lawyers, economists, scientists, industrial hygienists, who were there to revise the existing lead standard.

Mr. SIKORSKI. How does a team like the lead team operate? You draft the proposal. Is that correct?

Ms. STEWART. Well, that's the way it's supposed to be done. That's not what we did, actually.

Mr. SIKORSKI. You mean, you were told to do something other than drafting the proposal?

Ms. STEWART. We were told what to do, what mechanism to use to revise the standard. We were told what changes to make, and we were told to justify those changes.

Mr. SIKORSKI. You were told what to do, regardless of what the scientific evidence or the health hazards were that were documented?

Ms. STEWART. That's correct.

Mr. SIKORSKI. You were told at a meeting what the standard was going to be?

Ms. STEWART. In several meetings.

Mr. SIKORSKI. Who told the team how to draft the standard?

Ms. STEWART. Dr. Vance was the principal person who gave us directions.

Mr. SIKORSKI. I have obtained a memorandum written by the lead team to Dr. Vance, which has already been entered into the record, concerning comments he made to a lead team member. Did you sign that memo?

Ms. STEWART. Yes, I did.

Mr. SIKORSKI. That memo states that Dr. Vance told the lead team member that he considered certain language she had inserted in the preamble to the draft proposal to be "communistic" and that in a later conversation he "added that what she had written sounded as if she had been trained in Moscow."

Are those statements true, to the best of your knowledge?

Ms. STEWART. Yes, they are.

Mr. SIKORSKI. Did the lead team meet to discuss those statements before writing the memo?

Ms. STEWART. Yes.

Mr. SIKORSKI. You heard about the comments?

Ms. STEWART. We heard about the comments. We felt we ought to do something. So, we met and discussed them. We decided the best way to handle it would be through a formal memo to Dr. Vance.

Mr. SIKORSKI. I understand that after receiving the memo, Dr. Vance met with the lead team?

Ms. STEWART. Yes, he did.

Mr. SIKORSKI. What was the substance of that meeting?

Ms. STEWART. To discuss the issues raised in the memo.

Mr. SIKORSKI. Were you reassured by Dr. Vance's statements at that meeting?

Ms. STEWART. I came away feeling that the purpose of the meeting was not accomplished. I didn't feel comfortable with the situation.

Mr. SIKORSKI. Did he repudiate those comments?

Ms. STEWART. I don't remember. I am sorry.

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Mr. SIKORSKI. Did he in any way say that he didn't say them?

Ms. STEWART. I don't remember. I am sorry.

Mr. SIKORSKI. Did you feel after this meeting that you could return to carrying out OSHA's mandate of protecting workers?

Ms. STEWART. I felt like there was either a lack of understanding on Dr. Vance's part as to what our concerns were, or else he really didn't consider what he said important.

We went back. We still knew that we were there to do what they wanted us to do. And we really were nervous about what was going to happen to us at that point.

Mr. SIKORSKI. You felt a little apprehension about your own job safety?

Ms. STEWART. Before that time and after that time, yes.

Mr. SIKORSKI. And were you also concerned that decisions were being made with regard to protecting the health and safety of 75 million American employees, men and women, which were not based, decision which were not based on scientific data? Is that correct?

Ms. STEWART. Absolutely.

Mr. SIKORSKI. I would like to thank both of you for your willingness to appear here today.

I want to say, Ms. Stewart, that your language in that memo, when you say, more importantly, describing language and/or a person as "communistic" in our society is generally regarded as politically offensive, disparaging, and perhaps slanderous. The use of a label such as this is not in keeping with the principles of the Constitution, the nature of the civil service and the applicable collective bargaining agreement.

I think you are absolutely on target. I commend you for the courage that you and other members exhibited for protecting other employees and yourself and most of all other people by standing up to that kind of language.

I commend you, Dr. Waugh, for your willingness to put your professional judgment and conscience above some short-term economic objectives, as difficult as that is. You maintained the integrity of your credentials by your action. I commend you for that.

Again, both of you, if you have nothing that struck your mind in the interim, to close with, I thank you and excuse you.

Ms. STEWART. Could I say something?

Mr. SIKORSKI. Yes.

Ms. STEWART. I know that I still have friends back at OSHA. I know that there are a lot of people there who would have liked to have testified and didn't. Several people expressed to me that they were afraid for their jobs. I was afraid when I was there to stand up and object on a scientific basis. From what I gather, that fear hasn't gone away since I left.

Mr. SIKORSKI. And this conference, or at least the news reports and reports from people who were there, about this supposed KATN conference didn't allay those fears?

Ms. STEWART. No; not at all.

Mr. SIKORSKI. Would you say they increased?

Ms. STEWART. Most likely.

Mr. SIKORSKI. Dr. Waugh?

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Dr. WAUGH. I would also like to comment that I was advised in an informal fashion by other employees at OSHA that it would be a mistake for me to talk about this entire issue, including coming to this hearing, because there was the possibility that I could be blackballed from any other job in the Federal Government, because I would be labelled a troublemaker.

Mr. SIKORSKI. We have seen about 30 years ago a blacklist utilized, using a lot of the kind of terminology that has been discussed today. If this subcommittee or the full committee hears of any indication that that is the situation, any inkling that that has occurred, from either of you, or about any other employees that have talked with us or officials that have talked with us confidentially, I want you to inform us immediately. And we will take the appropriate action.

Thank you both.

We will call on Mr. Michael Urquhart, president of Local 12 of AFGE, the American Federation of Government Employees.

We are drawing down. Without objection, your entire statement will be placed in the record. I have had an opportunity to read it. I think it is full of very important evidence that has to be in the record.

If you can hit the high points as best you can, without losing the substance, it would be appreciated. Do the best you can, making sure your points are made.

Mr. Urquhart?

TESTIMONY OF MICHAEL URQUHART, PRESIDENT, LOCAL 12, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY DAVID SCHLEIN, HEAD STEWARD

Mr. URQUHART. Thank you, Mr. Chairman, for allowing us to be here today.

I am accompanied by David Schlein, who is the head steward for Local 12.

Mr. SIKORSKI. How do you spell your last name?

Mr. SCHLEIN. It is spelled S-c-h-l-e-i-n.

Mr. SIKORSKI. Before we begin, do either of you have objection to being sworn in?

Mr. URQUHART. No, sir.

Mr. SCHLEIN. No.

Mr. SIKORSKI. Do either of you request private counsel?

Mr. URQUHART. No, sir.

Mr. SCHLEIN. No, sir.

Mr. SIKORSKI. If not, would you stand and raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. URQUHART. I do.

Mr. SCHLEIN. I do.

Mr. SIKORSKI. Thank you. Go ahead.

Mr. URQUHART. Mr. Chairman, I will try to be brief.

I represent employees in the Washington metropolitan area at the Labor Department, about 4,500 employees, 300 of which are in the bargaining unit in the OSHA.

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The policy underlying the "kick ass and take names" comment are not the invention of one individual in OSHA. It is completely in accord with the tone for Federal labor-management relations established by the White House. As the Wall Street Journal reported, that policy is to "duke it out until one party falls."

In addition, conflict is inevitable and troublemakers will multiply when dedicated employees are told by political appointees not to do their job, or when they are disciplined for actually doing their jobs.

The Occupational Safety and Health Administration is a blatant example within the department of the results of this policy. Within OSHA we have witnessed the systematic dismantling of a once proud and effective regulatory agency. We have seen the agency's top scientists and physicians forced to resign or shunted aside. We have seen attempts to intimidate scientists and career staff to dissuade them from carrying out their duties in a responsible, professional manner. We have seen politically motivated downgradings, transfers, and reassignments. We have seen incidents where the considered professional and technical judgments of experienced career experts were shunted aside in the guise of political expediency.

For example, in San Francisco, a no-nonsense regional administrator, Gabriel Gillotti, was downgraded and transferred.

In Kansas City, newspaper articles chronicled the difficulties of Vern Strahm, who proposed a hefty fine for safety and health violations in the B.B. Andersen firm. This ran him afoul of then OSHA head Thorne Auchter, who reversed the decision. Later, B.B. Andersen offered Auchter the presidency of the firm when Auchter left OSHA.

In Denver, there was widespread national publicity concerning the case of regional administrator Curtis Foster, who was later reinstated after he was fired through action at the MSPB. According to the Rockey Mountain News, former employees who worked under Foster testified under oath that they felt pressured and intimidated by Coors.

In Washington, OSHA attempted to fire cancer scientist Peter Infante when he publicized the fact that formaldehyde was a carcinogen.

In a case involving the R.D. Andersen Construction Co., then Solicitor of Labor Timothy Ryan ordered regional attorneys to settle a case they had already won, a precedent-setting case holding that a worker's conversations with the press about job hazards was protected under the OSHA Act.

In a recent decision not to issue field sanitation standards, which you have heard about today, expert advice was once again ignored, and one employee was fired.

A new scandal is developing as this hearing is being conducted concerning a revision of the shipyard standards, referred to internally as the Newport News project. Experts close to the work believe that 60 to 70 percent of the present safety standards covering shipyard workers will be deleted or watered down. We understand that numerous letters, documents, and other papers indicating the agency was working closely with the shipyard council and Newport News have been produced under the Freedom of Information Act

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by the press and the steelworkers union. We further understand that Newport News is owned by Tenneco and that Robert Rowland owns stock in Tenneco. In addition, the former Solicitor of Labor Tim Ryan is a lawyer representing Tenneco, as well as the former Secretary of Labor.

I want to remind the committee that Newport News under the previous administration received one of the largest fines in history, amounting to $700,000, for safety and health violations.

After purging the agency of most of its top scientists, the agency brought in a host of top officials with questionable credentials. None of Thorne Auchter's special assistants had any safety and health experience, or previous extensive managerial experience. None were scientists or professionals. One was a journalist, another a legal secretary. A third had a stint as a cabaret dancer. And one other helped organize tuxedo rentals at the first inaugural ball.

On the other hand, those who go along do get rewarded. Fred Hawkins, who personally piloted Auchter and friends in a private plane, recently got promoted from a GS–14 to a GS–15 position.

Local 12 is aware of numerous other instances of victimizations where employees are too fearful to allow the use of their names. This should not be suprising, given what has happened to top officials in OSHA. Indeed, the message is clear: Don't make waves or they'll get rid of you.

The policy inherent in the Meadows' comments of taking action and letting the union or a lawyer try and catch you is not isolated to OSHA or reprisals against individuals who oppose management decisions. It has become a widespread management policy encouraged by OMB.

Let me just briefly summarize. The widely publicized "kick ass and take names" memo is just the tip of the iceberg. What we have had in the Labor Department, indeed in the Reagan administration, is labor-management relations by confrontation. Clearly, the political appointees in the first Reagan administration have chosen to duke it out. In the process, however, the morale of the employees has sunk to disastrously low levels, program efficiency has suffered, and the quality of services we are able to render to the taxpayers has declined.

One of the major reasons for tension at the Labor Department arises from the view of many initial appointees that labor unions are, by nature, an evil influence. The managers in the Department do not accept the views of Secretary Brock that the rights of workers to organize and bargain with their employers is a settled issue.

A number of top managers also do not accept that there are other settled issues including the right to a safe and healthful workplace, the right to a secure pension, the right to equal employment opportunity, and the right to a living wage.

Many career employees and members of local 12 are attracted to the Department of Labor because of their support for the programs that we administer. Both programs and employees have been under siege for nearly 5 years now. We look to the new Secretary and to the members of Congress, including your committee, to lift this siege, to end this long nightmare, and to indeed instill in us, and in

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our programs, that new pride that the Secretary so eloquently spoke of last Friday.

In conclusion, Mr. Chairman, we thank you for holding these hearings. We urge you to further investigate labor relations at the Department of Labor.

Finally, I would like to invite you and other members of the committee to come tour the department with us and see first-hand what the conditions are.

[The statement follows:]

STATEMENT BY MICHAEL URQUHART, PRESIDENT, LOCAL 12, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

I would like to thank the members of this subcommittee for providing Local 12 the opportunity to testify at these hearings. I am Michael Urquhart, and I am President of Local 12, AFGE, which represents Labor Department employees in the Washington metropolitan area. I have been president of the local since the spring of 1984.

Our bargaining unit covers 4,500 employees at Labor, including about 300 in OSHA. I have become familiar with the problems in OSHA through discussions with employees and stewards in that agency, as well as through my official capacity representing these employees before management.

I would like to preface my remarks by saying that the description of certain policies at the Labor Department all precede the arrival of Secretary Brock. The actions and policies I will report on are all in sharp contrast to Secretary Brock's comments to the National Press Club regarding the need for labor-management cooperation.

The policy underlying the "kick ass and take names" comment are not the invention of one individual in OSHA. It is completely in accord with the tone for federal labor-management relations established by the White House. As the Wall Street Journal reported, that policy is to "duke it out until one party falls."

In addition, conflict is inevitable, and troublemakers will multiply, when dedicated employees are told by political employees not to do their jobs, or when they are disciplined for actually doing their jobs.

At the Labor Department, there has been a dramatic shift away from programs that protect workers, and towards harassment of labor unions. The union is viewed as, at best an embarassment, at worst a conspiratorial organization bent on wreaking mischief on its employer.

Indeed, there was considerable discussion of the need to bust the union at a meeting of agency heads to discuss whether to reopen the collective bargaining agreement. Nor is this comment isolated. Previously economist Carl Dahlman was permitted to stay on the job after it was revealed that he wrote to his boss, at that time the Assistant Secretary for Policy John Cogan, that he wanted to join his staff to help him burst the power of American unions.

The Occupational Safety and Health Administration is a blatant example, within the Department, of the results of this policy. Within OSHA, we have witnessed the systematic dismantling of a once proud and effective regulatory agency. We have seen the agency's top scientists and physicians forced to resign, or shunted aside. We have seen attempts to intimidate scientists and career staff to dissuade them from carrying out their duties in a responsible, professional manner. We have seen politically motivated downgradings, transfers, and reassignments. We have seen incidents where the considered professional and technical judgments of experienced career experts was shunted aside in the guise of political expediency.

In San Francisco, a no nonsense regional administrator, Gabriel Gillotti, was downgraded and transferred. Gillotti was out of favor reportedly because he favored strict monitoring of State safety and health programs.

In Chicago, Ron McKean, a regional administrator with a reputation for carrying out his enforcement responsibilities, was reported fingered by business interests as an OSHA official that should be fired or transferred. He was demoted and transferred to Washington, and then to Des Moines, Iowa.

In Kansas City newspaper articles chronicled the difficulties of Vern Strahm, who proposed a hefty fine for safety and health violations at the B.B. Andersen firm. This ran him afoul of then OSHA head Thorne Auchter, who reversed the decision and settled the case, saving Andersen a $12,500 fine. Later, B.B. Andersen offered Auchter the presidency of the firm when Auchter left OSHA.

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In Denver, there was widespread national publicity concerning the case of regional administrator Curtis Foster, who alleged that he was fired for attempting to enforce the OSHA laws in the plants owned by prominent GOP contributor Joseph Coors. He was later reinstated by the MSPB. According to the Rocky Mountain News, former employees who worked under Foster testified under oath that they felt pressured and intimidated by Coors.

In Washington, OSHA attempted to fire cancer scientist Peter Infante, when he publicised the fact that formaldehyde was a carcinogen.

In another case in Washington, the agency has been carrying out a campaign of harassment that has included a downgrade and a transfer of Muhammed Rahman for his refusal to falsify a worker's compensation claim form.

In a case involving the R.D. Andersen Construction Company, then Solicitor of Labor Timothy Ryan, ordered regional attorneys to try to settle a case in which they had won a precedent-setting preliminary hearing holding that a worker's conversations with the press about job hazards was protected under the OSHA ACT.

In the recent decision not to issue field sanitation standards, the advice of their own experts was once again ignored by OSHA officials. Shortly thereafter, one of the experts, Dr. Diane Waugh, was summarily fired after being told by her immediate boss that her contract would be renewed.

Career staff views were also ignored in the decision (since rescinded) to allow for "human experimentation" at Dan River testile company.

And a new scandal is developing as this hearing is being conducted concerning a revision of the shipyard standards, referred to internally as the "Newport News project". Experts close to the work believe that 60 to 70 percent of the present safety standards covering shipyard workers will be deleted or watered down. We understand that numerous letters, documents, and other papers indicating that the agency was working closely with the Shipyard council and Newport News have been produced under the Freedom of Information Act by the press and the steelworkers union. We further understand the Newport News is owned by Tenneco, and that Robert Rowland owns stock in Tenneco. In addition, former Solicitor of Labor Tim Ryan represents Newport News (as well as former Secretary Ray Donovan). The entire issue of the politically motivated effort to revise the shipyard standards, the role of Ryan and Donovan, the real or apparent conflict of interest involving Robert Rowland, all need to be explored in more detail.

After purging the agency of most of its top scientists, politically shifting regional administrators, and attempting to intimidate and fire the few career scientists remaining, the agency brought in a host of top officials with questionable credentials. None of Thorne Auchter's special assistants had any safety and health experience, or previous extensive managerial exprience. None were scientists or professionals. One was a journalist, another a legal secretary. A third had a stint as a cabaret dancer. One other helped organize tuxedo rentals at the first inaugural ball.

On the other hand, those who go along do get rewarded. Fred Hawkins, who personally piloted Auchter and friends in a private plane got promoted from a GS–15 position.

Reprisals have also been taken against inspectors in MSHA. In two cases these reprisals were the direct result of company pressure.

Blake Hannah, an inspector in Price, Utah, was eventually suspended for 14 days after Atlantic Richfield complained that Hannah was not abiding by DOL's new attitude in cooperation" rather than enforcement.

Charles Caulfield was discharged following complaints from the Consolidated Coal Company. He won reinstatement in court, after showing a conspiracy between Consolidated and MSHA officials. He was then transferred.

Local 12 is aware of numerous other instances of victimizations where employees are too fearful to allow use of their names. This should not be surprising, given what has happened to top officials in OSHA. Indeed, the message is clear to career employees—don't make waves or they'll get rid of you.

So confident is management of its ability to get away with this policy, that a Deputy Assistant Secretary feels he can make the "kick ass" comments in public and get away with it. And why not? It was after he made these comments that he received his appointment as Deputy Assistant Secretary. The subsequent memo from Robert Rowland, distributed on May 3 but backdated to April 29 again fails to repudiate the Meadow's comments.

The policy inherent in the Meadows comments, of taking action and letting the union (or a lawyer) try and catch you, is not isolated to OSHA or reprisals against individuals who oppose management decisions. It has become a widespread management policy encouraged by OMB.

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Consultations and negotiations have become meaningless exercises as management unilaterally acts while declaring all union proposals non-negotiable. Frivolous cases are forced to arbitration at great expense to the Department and Local 12. In one case, the arbitrator declared management's actions to be shameful, when it proceeded to arbitration with charges it knew to be false.

While union officials have not suffered from the more blatant forms of harassment, such as dismissals or transfers, they are coming under increasing pressure in the evaluation of their performance. Considerable pressure was brought to bear on the supervisor of the chief steward in OSHA to get him to remove the outstanding rating he had given the steward. The supervisor was subsequently transferred. The late Robert Hastings, director of the Office of Labor Management Relations, sent out a memo citing an FLRA decision that permitted giving an unsatisfactory rating to a union official who they felt spent too much time on official time. Already, increasing numbers of union officials have seen the ratings lowered since they took office, and it is hard to calculate the cost of lost promotions.

SUMMARY

The widely publicized "kick ass and take names" memo is just the tip of the iceberg. What we have had in the Labor Department, indeed in the Reagan Administration, is labor-management relations by confrontation. Clearly, the political appointees in the first Reagan Administration have chosen to "duke it out". In the process, however, the morale of the employees has sunk to disastrously low levels, program efficiency has suffered, and the quality of services we are able to render to the taxpayers has declined.

One of the major reasons for tension at the Labor Department arises from the view of many initial appointees that labor unions, are by nature, an evil influence. Many of the managers in the Department do not accept the views of Secretary Brock that the rights of workers to organize and bargain with their employers is a "settled" issue.

A number of top managers also do not accept that there are other "settled" issues including the right to a safe and healthful workplace, the right to a secure pension, the right to equal employment opportunity, and the right to a living wage.

Many career employees and members of Local 12 were attracted to the Department of Labor because of their support for the programs that we administer. Both programs and employees have been under siege for nearly five years now. We look to the new Secretary, and to the members of Congress, including your committee, to lift this siege, to end this long nightmare, and to indeed instill in us, and in our programs that "new pride" that the Secretary so eloquently spoke of last Friday.

In conclusion, Mr. Chairman, we thank you for holding these hearings, and we urge you to further investigate labor relations at the Department of Labor.

Mr. SIKORSKI. Thank you, Mr. Urquhart.

I am disturbed by your testimony regarding harassment of union officials within OSHA. I understand a large number of them have been targeted with poor performance ratings.

How many people are we talking about? How many union officials, union stewards have gotten poor performance ratings?

Mr. URQUHART. If you mean by that, unsatisfactory performance ratings, I don't know of an official at this point who has received an unsatisfactory rating in OSHA. What has happened is that people who have received higher ratings in the past are now receiving satisfactory ratings.

Mr. SIKORSKI. Let me ask you a different way.

Have any one of your stewards or union officials received an outstanding performance rating?

Mr. URQUHART. Yes. The chief steward of OSHA received an outstanding rating in his last rating, only after considerable pressure was brought to bear on the supervisor who gave him that rating, and after it was upheld, that supervisor has since been transferred. So, he is no longer the chief steward's supervisor.

Mr. SIKORSKI. You've got how many officials or stewards?

Mr. URQUHART. In OSHA?

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Mr. SIKORSKI. Yes.

Mr. URQUHART. At the present time I believe we have eight.

Mr. SIKORSKI. So, out of eight, not one got an outstanding rating?

Mr. URQUHART. No, the chief steward did.

Mr. SIKORSKI. One did?

Mr. URQUHART. Yes.

Mr. SIKORSKI. From a supervisor, after considerable pressure. That supervisor then was transferred.

Mr. URQUHART. That's correct.

Mr. SIKORSKI. We have heard testimony from many sources that Mr. Rowland is reported to believe OSHA is riddled with Commies. You heard his testimony today absolutely denying that. Had you or your membership heard about this opinion before?

Mr. URQUHART. I'm sorry. Could you repeat the question?

Mr. SIKORSKI. We have heard from many sources that Mr. Rowland is reported to have said that OSHA is riddled with "Commies." He absolutely denied that in testimony here today. And you were here for that testimony. Had you or your membership heard about this alleged statement?

Mr. URQUHART. Yes, we have.

Mr. SIKORSKI. What did you hear and in what context? Was it as he typified it today?

Mr. URQUHART. No. We heard it as you expressed it, that there was a meeting of top officials in the Department of Labor, that at least Ford B. Ford was present and other top officials. I don't know how many. And at that meeting Mr. Rowland made the comments that there were too many Communists in OSHA and he was going to root them out.

And I believe that has been widespread reported in OSHA. We have no way to confirm that because——

Mr. SIKORSKI. You will assist the subcommittee in discovering the sources of that rumor?

I have seen a disturbing study from GAO showing a marked decrease in the number of scientists and technicians at OSHA. The study showed that in a period from September 1980 to September 1982, scientific staff decreased by 26 percent while nonscientific staff decreased by only 9.5 percent. Other testimony we have heard today has increased my fear that scientific staff at this Agency are being replaced with political appointees or with staff that have no professional background in safety and health issues.

I understand from you that this trend continues right up to the line and regional administrators. Of the 10 OSHA regions in the country, can you tell me how many of the administrators who were on board in the prior administration are left since the current administration took office?

Mr. URQUHART. I believe there are only three left.

Mr. SIKORSKI. And of the new regional administrators, what kind of professional background do they have?

Mr. URQUHART. I do not have the information on all of them. I would have to check that at this point. I have heard that, again, many of them lack credentials in the safety and health field. I have heard that one was a former FBI agent and one was a former journalist. But I would have to check the records to get more concrete information on specific individuals.

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Mr. SIKORSKI. You're not familiar with indications that one was a legal secretary and one spent some time as a cabaret dancer?

Mr. URQUHART. Yes. Many of those are special assistants rather than regional administrators, those individuals you are talking about.

Mr. SIKORSKI. I see.

Mr. URQUHART. I can give you their names.

Mr. SIKORSKI. I am interested in more details. Please provide that for the record. The record will remain open for that purpose.

I am interested in more details on the cases that you cited and alluded to in your testimony, that Mr. Rowland denied hearing anything of. As I recall his testimony, he said he had heard no concerns raised about any of these cases you mentioned in your testimony.

With respect to Curtis Foster, are you aware of the recent MSPB finding in his favor?

Mr. URQUHART. Yes, I am.

Mr. SIKORSKI. And Vern Strahm, the regional administrator for Kansas City, was fired after a proposed hefty fine for a Kansas City company? Is that correct?

Mr. URQUHART. Yes, I believe so.

Mr. SIKORSKI. Former OSHA director Thorne Auchter subsequently joined the same firm?

Mr. URQUHART. That's correct.

Mr. SIKORSKI. This regional administrator fined and then was fired.

Mr. URQUHART. And the fine was rescinded.

Mr. SIKORSKI. Who fired the regional administrator, Vern Strahm?

Mr. URQUHART. I don't know.

Mr. SIKORSKI. Who rescinded the fine?

Mr. URQUHART. My understanding is that the orders came from Auchter, but I——

Mr. SIKORSKI. From Mr. Auchter, who then subsequently was employed by that firm.

Mr. URQUHART. I believe that is what the press reported. I have no first-hand knowledge of it.

Mr. SIKORSKI. Except for the intervention of Congress, OSHA would have fired Peter Infante, simply because he suggested that workers should be protected from the carcinogenic effects of formaldehyde. Is that correct?

Mr. URQUHART. I believe so, yes.

Mr. SIKORSKI. Can you elaborate on the case where the arbitrator declared that OSHA management's actions were "shameful" and that they have proceeded with arbitration even though they knew charges to be false?

Mr. URQUHART. Mr. Chairman, that was not a case in OSHA. That was in ETA.

Mr. SIKORSKI. That was in ETA, OK. Are you familiar with that?

Mr. URQUHART. Yes, I am.

Mr. SIKORSKI. Could you provide that for us as well?

Mr. URQUHART. Yes, I can.

[The information was furnished and retained in subcommittee files.]

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Mr. SIKORSKI. Preparing for this hearing, the staff was contacted by a number of individuals with stories to tell, but, who fear on-the-job reprisal or firing, were they to do so publicly. Have you seen much evidence of this kind of intimidation, or at least concern about this kind of intimidation?

Mr. URQUHART. The concern is widespread. Since the announcement of these hearings, I have received numerous phone calls, many of them anonymous, from people who had stories they wanted to tell but were afraid to come forward and tell them. You ought to understand that being president of the local, you are sometimes like a father confessor; people come to you with a lot of problems that they are unwilling to go public with for fear of reprisal or for fear that it will hurt their careers. Besides just the question of direct reprisals, you have to understand that many people are fearful that, if they speak, they will not receive any promotions in the future or they will be shunted aside or transferred, or whatever. And given what's happened to many of the regional administrators, who are high-level officials, the fear is quite widespread.

That fear, by the way, preceded the Meadows memo and the report on that conference.

Mr. SIKORSKI. That's right.

You wrote a letter to Secretary Brock in which you stated that you confirmed the reports of Mr. Meadows' statements. How did you do that?

Mr. URQUHART. Representatives of the union spoke with people who were present at the meeting.

Mr. SIKORSKI. That is, you confirmed the statements that were attributed to Mr. Meadows, both in news reports and this anonymous unsigned memorandum that was a subject of discussion here today. Is that correct?

Mr. URQUHART. That's correct.

Mr. SIKORSKI. And you did that by talking to people who were at the meeting?

Mr. URQUHART. That's correct.

Mr. SIKORSKI. I would like to thank you and make a concluding statement.

When I originally heard about the "KATN" meeting, it was the most striking example of what has been a disturbing trend in employee relations in a number of Government agencies. I called the hearing so that OSHA could have a chance to explain what the policy meant, and whether it was a policy. I am sorry to say that I am not reassured by what we heard today.

I am also not very amused by the things which the testimony from OSHA managers indicates to be roughly a joking matter within OSHA. I continue to be afraid that there is intimidation of employees within OSHA.

This hearing has revealed the following: first, that Mr. Meadows contradicted himself on whether or not he had encouraged or discussed—"kick ass and take names" at that seminar.

Second, flip charts bearing the initials KATN were generated by several of the working groups, and it appeared to be a prevalent theme at this OSHA seminar.

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Third, OSHA employees are afraid for their jobs. They are afraid to talk in public, but they did talk to subcommittee staff.

Fourth, even if KATN was only done in a joking casual manner, the perception is one of fear that is generated by it.

Fifth, Mr. Rowland never repudiated the "kick ass and take names" policy. He wrote a memo several days after the seminar to presumably clarify "misconceptions" from the seminar. But that memo was not received by OSHA managers until May 3, as we understand it, after the subcommittee asked OSHA witnesses to appear at a hearing and after local 12 of AFGE complained about the KATN conference.

Sixth, Dr. Vance, director of Health Standards at OSHA, was accused of calling an employee's writing—and I quote,"communistic," and attacking her as if she had been "trained in Moscow." He did not deny making those statements.

Seventh, Mr. Rowland admitted to, at the least, joking with OSHA managers, calling employees—and I quote, "Commies". He did not testify that he disagreed with the managers or reprimanded them. He admitted joining in.

Eighth, OSHA employees responsible for the field sanitation standard wrote to Mr. Rowland expressing their concern over having been directed to either weaken the standard or kill the standard altogether. After that memo, the contract of the only physician on the team was terminated under unusual circumstances. Her contract was terminated after she had been assured that her contract would be renewed.

Ninth, Dr. Waugh heard rumors that top-level OSHA officials were in a flap over, she said, "the black woman who signed the field sanitation memo." She heard that it was a mistake for her to sign it since she was so vulnerable as a contract employee. In fact, her contract was terminated.

Tenth, Trish Stewart, the lead team leader, was told to write the lead standard regardless of the scientific evidence about health hazards to workers. Dr. Vance was the OSHA official who repeatedly told the lead team what to write.

Eleventh, both Ms. Stewart and Dr. Waugh testified they spoke to many people at OSHA who would have like to testify today but they were afraid they would lose their jobs if they came forward.

Twelfth, Mr. Urquhart testified KATN, "kick ass and take names," is a general policy, that politically motivated personnel actions have been taken against employees who try to do their job to protect the 75 million American workers, also that scientists are having their advice and judgment ignored, and the agency is purging many of its scientific and technical employees. Their replacements are not experts but political appointees.

Finally, this hearing has brought to light some serious charges. We will continue to investigate. We intend to have a further hearing or hearings, at which time we will take up Mr. Rowland's suggestion that we call as witnesses managers who were present at the KATN meeting, including Mr. Lake, who, we are informed, is here today.

We will also ask Secretary Brock to come with them and tell us how he plans to respond to this problem, respond to the KATN

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conference, respond to the other concerns that were raised today, and to bring a new pride, in his words, to the agency.

I want to thank this panel, and the other panels for your assistance today.

If there is nothing more, the hearing is adjourned.

[Whereupon, at 5:35 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

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